Public Documents

OF

Governor William O. Bradley.

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PUBLIC DOCUMENTS

OF

GOVERNOR WILLIAM O. BRADLEY.

INAUGURAL ADDRESS, DELIVERED DECEMBER 10, 1895.

To say that I sincerely thank those who, by their suffrage, have elevated me to the highest office of the State, is giving but feeble expression to the gratitude that fills my heart.

With the gratification that follows triumph, comes the apprehension of inability to perform the duties of this great office.

Protracted and uninterrupted control by any party universally results in injury to the State, and begets negligence, carelessness and, not infrequently, corruption. Under such conditions, the succession of another party arouses public expectation to such a degree that, in most instances, however creditable, its administration is a source of disappointment. Profoundly impressed with this expectation, apprehensive lest my ability may not prove equal to the emergency, I assume the duties of chief magistrate of our beloved Commonwealth, confidently leaning upon the patriotism of a splendid people for support, and humbly invoking the aid of that higher Power which directs the destiny of nations.

The credit and honor of the State and nation are of first importance. The popular verdict, which has recently declared in favor of the use of both gold and silver as money, but at the same time the maintenance of the best and highest standard so that every dollar shall be of equal value, should be accepted and adhered to. And while public credit should be protected, we should none the less favor a well regulated system of protection to every branch of American industry. Such a system as will encourage genius, nourish

and increase diversified industries, maintain and enlarge a home market and shield every honest son of toil from the degradation of competition with the pauper labor of the Old World. Together with this, should be fostered that reciprocity which will insure free exchange of our products with other nations for commodities which can not be successfully grown or manufactured in this country.

The accomplishment and maintenance of these economic measures will develop our resources, advance our material prosperity and give Kentucky the position she is entitled to occupy in the sisterhood of States.

In the management of State affairs, honesty and fidelity are demanded of every public officer, and any irregularities that may have been or may be committed, should be punished and the honor of the State and people vindicated. Public officers are not the masters but the servants of the people, and whenever they fail to faithfully and honestly discharge their duties, merit severest condemnation, discharge from the service and such punishment as the law provides.

Public education, the purification of the ballot, a just system of taxation, such as shall not fetter the material advancement of any section, shall at all times be promoted by every energy of which I am possessed.

The people rightfully demand retrenchment and reform as well as the strictest economy in every branch of the public service not inconsistent with the general welfare. And I promise to do everything in my power to see that their demand is respected. Above all things, the Constitution and laws within its spirit must be enforced. Every citizen shall be protected in life, liberty and property at whatever cost.

I earnestly and solemnly appeal to the people in every locality, and to all the officers of the State for a faithful, energetic and fearless enforcement of the law. Nothing can be more effective in the suppression of crime, than the cultivation and expression of a healthy public sentiment which will hold in just execration every criminal, more especially the murder and assassin. Mob violence, whose home is in the breasts of cowards, should be prevented at all hazards, or, if committed, promptly and severely punished. It is an open declaration of contempt for the laws, the courts and the administration of justice, and, instead of promoting, destroys the welfare of the State. The commission of crime to punish crime can find no apologist in Christian civilization.

The people are the source of power. From them I hold my commission and to them I am responsible. Bearing this continually in mind, I shall respect, and, without fear or favor, faithfully endeavor to carry their will into execution. I shall do right as God enables me to see the right; be just as He enables me to determine what is just and, by the love that I cherish for the State of my birth, do all that within me lies to advance her prosperity, enforce her laws, protect her citizens and maintain her honor, remembering at all times that I am not the Governor of a party but of all the people. Knowing that the wisdom of all can be more safely relied on than the wisdom of a portion; that next to the people the press is the mightiest power, I appeal to both press and people, irrespective of party, now that the conflict has passed and the angry waves of party strife sunk to rest; now that we are embarking for our voyage upon a calm and beautiful sea, for their advice and assistance in the advancement of the State, whose past is illustrious, whose present demonstrates so many needed improvements and whose future, if her sons but do their duty, will surpass the most extravagant expectations.

Trusting, that at the end of the next four years, a record will have been made of which every citizen of the Commonwealth will be justly proud, and with an earnest prayer that not Kentucky alone, but every State of the nation will have made substantial advancement, that the bonds of love and union will have grown stronger and our magnificent republic will have grown in material prosperity, power and grandeur, allow me to conclude, my countrymen, by thanking you for this generous demonstration.

Mr. Chief-Justice, I am now ready to take the oath.

REGULAR MESSAGE TO GENERAL ASSEMBLY OF 1896.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, January 10, 1896.

Gentlemen of the Senate and House of Representatives:

Owing to the fact that the report of the Auditor is not printed, it will be impossible for me to speak as intelligently as I desire concerning the financial condition of the State. Auditor Norman, however, has kindly furnished me some information concerning the matter to which your attention is respectfully directed.

By reason of the decision of the Appellate Court in the bank tax cases the State has been materially relieved. In other words the payment of 75 instead of 42½ cents on the $100 into the State Treasury has largely augmented the revenue. This, however, will add to the burden of many counties and cities which will now be compelled to increase their rate of taxation in order to supplement the losses they have sustained by reason of the fact that the banks have, in a large measure, been relieved of county and municipal taxes.

But notwithstanding this relief to the State, it will be seen that its financial condition is not at all satisfactory.

Auditor Norman informs me that at the end of the fiscal year, June 30, 1895, there was a deficit in the Treasury of $41,968.17 and $39,981.77 to the credit of the School Fund. On the 31st of December, 1895, this deficit is said to have been $19,355. There was at that date $113,683.94 in the Sinking Fund, set apart, however, to pay military bonds and interest then due. The sheriffs had paid in all taxes due the State except $5,992 owing by the sheriff of Bracken county.

There will be due the common school teachers during this month the remaining one-fifth of wages, about $400,000. The amount of unpaid warrants is $383,823.19. The amount of claims filed and allowed is estimated at $35,000. There is also due the charitable institutions for the last quarter $113,000, and the further sum of $176,000 on appropriations to enlarge their buildings.

Warrants have been issued to the State officials for salaries but the amount unpaid is not stated. These, however, are embraced in the unpaid warrants mentioned. Besides these there is a considerable amount due on claims allowed but not yet presented to the Auditor.

The indebtedness above named is in addition to the bonded in-

debtedness of the State, as follows, as shown by Auditor's report at the end of the fiscal year 1893, page 146:

Military bonds		$174,000 00
Certificates of indebtedness		500,000 00
Railroad script, past due	$ 394 00	
Thirty-year issue, 1835	5,000 00	
Also old issue, 1841 to 1846	1,000 00	
		6,394 00

(The last-named bonds supposed to be lost or destroyed.)

Bonds held by the Board of Education	$2,312,596 16
Total indebtedness	$2,992,990 16

The resources of the Sinking Fund in said report are estimated at $701, 668.91.

Semi-annual interest is payable upon the school bonds held by the Board of Education, but the State will not be called upon to pay the principal. The certificates of indebtedness draw interest, but the principal does not fall due until 1905.

As already stated, the amount in the Sinking Fund will be paid on the military bonds.

It is manifest that steps must be taken to liquidate debts now due, for the credit of the State must be maintained at all hazards. As to what the estimated expenses and revenues of the present fiscal year may be, I do not know. I fear, however, that the present tax rate will not prove sufficient to meet current expenses, but as I have not the necessary data before me, can not speak with any degree of certainty. I shall recommend certain reforms, which, if adopted, will, in my judgment, curtail expenses and increase the revenue. Some of these, however, can not be made effective for some time to come; others may prove beneficial during the present year.

I submit to your wisdom on full information, after inspection of Auditor's report (which should be obtained at as early a date as possible) and a close scrutiny of all the surroundings, whether or not the rate of taxation should be increased, or what should be done to provide payment of accrued indebtedness.

As stated, some of the remedies recommended may not be put into speedy operation because of the fact that they can not become available until the present terms of those in office have expired; but that furnishes no reason why they should not be adopted, so that they may prove of benefit in the future.

CRIMINAL PROSECUTIONS.

One of the largest expenditures is that growing out of criminal prosecutions. The witness fees alone are enormous and seem to be constantly increasing.

The business of the Circuit Courts is seriously retarded and their expenses augmented, by reason of the trial of the immense number of statutory misdemeanors, which constantly crowd the dockets. At least one-half the expenses of grand juries are incurred by reason of time occupied in investigating, and a considerable portion of the expense of petit juries grows out of the time consumed in trying these cases.

If the jurisdiction of this character of prosecutions, when the maximum of fine is under $500, or maximum of imprisonment is under one year, were transferred to the Judges of Quarterly Courts and the concurrent jurisdiction of Justices and Police Judges with said court to try misdemeanors as now fixed by law (the trials to be had under warrants), a large amount would be annually saved in witness and grand and petit jury fees and eventually result in curtailing the number of judicial districts, thereby insuring an additional saving to the State in salaries, etc.

Another large expense is caused by the indiscriminate summoning of witnesses for which twenty cents each is allowed. Something should be done to limit the action of officers in this respect. Again, it is said that in many instances persons are arrested on the charge of grand larceny when they are known to be guilty only of petit larceny, and in this way large sums are annually collected from the Treasury for arrests and witnesses. The enactment of a law is recommended requiring an affidavit to be made, plainly showing that the offense charged is grand larceny, before any order of arrest or subpoenas are issued.

Examining Courts, too, are increasing expenses almost constantly. It is true the law limiting the fee to $4 per day has proven to some extent effective; but I suggest that not more than $2 shall be allowed for each day of eight hours or less consumed in the trial, and not more than $4 in any event. It should be made the duty of the County Attorney, under penalty, to give these claims close attention and certify them under oath before payment can be made.

The chief source of expense, however, is found in hung juries and repeated trials. In nearly every instance this results from diffi-

culty in determining the extent of punishment. In the Federal and many State Courts of the Union it has proven quite efficacious, while having the jury to pass on guilt and its degree, to clothe the judge with power to fix the punishment. Doubtless the adoption of this rule in Kentucky would save the State thousands of dollars and at the same time result in more speedy punishment of criminals.

ATTORNEYS' FEES.

Section 114, Kentucky Statutes, requires the Attorney-General to investigate all unsatisfied claims, demands and judgments in favor of the Commonwealth, and confers upon him the right to employ attorneys to prosecute the same, the attorneys thus employed to be paid by the State. This employment should not be permitted unless the Attorney General in each instance makes affidavit that he is unable to give the case personal attention by reason of sickness or press of business.

It should also be provided that when judgment has been rendered in favor of the Commonwealth, no attorney shall be employed until there has been an earnest effort made to collect it by execution and the same has been returned no property found.

There seems to be no limit fixed by law to the compensation of County Attorneys. Aside from counties containing cities this may not be necessary, but there should be a limit provided in all counties in which there are cities of the first, second or third class, and all sums over that amount covered into the Treasury. The passage of a law of this character would doubtless save a considerable sum to the State.

ABOLISHMENT OF OFFICES.

The abolition of the office of Commonwealth's Attorney was unquestionably contemplated by the framers of the Constitution, and in my judgment it should be abolished. In many of the States of the Union the office does not exist, and the laws in such States are equally well administered as are those where it does exist. By placing in the hands of the County Attorney all prosecutions and giving him a fair percentage on fines and forfeitures, in addition to allowances made by the counties, the office would be more desirable and be sought by a good class of competent lawyers. I do not mean by this to insinuate that the office is not now filled by competent

gentlemen, but that men of larger experience who, in many instances, can not now afford to take the place, would readily accept it on account of the increased salary.

The office of the Register of the Land Office has for years been a source of expense, without corresponding benefit to the State. The Constitution clearly contemplated its abolition, and I trust that you may see fit to abolish it at this session, placing the books and papers of the office in the hands of the Auditor or Secretary of State, after the expiration of the present term, and providing one clerk to look after the discharge of its duties. And in this connection, your attention is called to the fact that patents are being constantly issued for land already appropriated. The effect of this is to cloud titles and lessen the value of real estate. It is suggested that you require every person asking for a survey and warrant to notify the County Processioners, and have them give notice to all persons who have lands adjoining the land sought to be appropriated, and all others who are known to them to have any claim upon the adjoining lands, or that sought to be patented, of the time of making the survey.

The Commissioner of Agriculture and the Agricultural Bureau cost the State annually a large sum of money. The benefit, if any, derived is very slight. As to the Grain Inspector and Weigher, if necessary, the power to appoint should be lodged with some State officer. An amendment should be proposed to the Constitution for the abolishment of this unnecessary State appendage.

The Board of Equalization, in my judgment, has proven an affliction. The selection of men in distant portions of the State to pass upon the value of property already sworn to by the party assessed, certified by the Assessor and revised by the County Supervisors of the locality where it is situated, can not be otherwise than uncertain and unjust. It is suggested that the revenue or Auditor's agent, whose duties and compensation have recently been regulated by law in such way as to make them an advantage to the State, be required to look carefully into the list of assessed property after the meeting of the supervisors and take such steps as he may deem necessary by action or prosecution, to discover any property not listed; and where property has been assessed at less than its value at a fair voluntary sale, to institute such proceeding as may be necessary to recover the taxes properly coming to the State, together with a certain per cent. by way of compensation to the agent.

The Auditor's agent should be an attorney at law or, if not,

should be compelled to employ an attorney and compensate him out of his per cent. for his services.

REDUCTION OF SALARIES.

At the conclusion of our civil war, while gold was selling at a large premium, the salaries of the State officers were not nearly so large as to-day—in many instances not one-half as much. Notwithstanding this, competent persons were as anxious to serve the State then as at any period of its history.

It is true that salaries can not be reduced except to take effect after the expiration of the term of the present incumbents, but this furnishes no just reason why they should not be reduced, to take effect after that time. Public officials should be reasonably compensated, but the tax-payer should not be overburdened or oppressed.

REVENUE AND TAXATION.

The passage of a well-regulated law increasing the license fees of wholesale and retail liquor dealers, druggists and distillers, would produce considerable revenue. The same may be said of increased license fees on pool and billiard tables and other similar devices and of special taxes for the sale of tobacco, cigars, etc.

The license fees for the circuses and other entertainments might well be increased and regulated according to the population of the various counties in which they exhibit. License fees might be required of all persons selling pistol cartridges and all newspapers and others offering to furnish firearms as premiums.

A fee of two dollars should be charged for each commission issued to an officer. The tax on deeds and mortgages should be regulated according to the value of the property mortgaged or conveyed, not less than twenty-five cents and not more than $2. There is no reason why a mortgage or deed for $100 worth of property should be taxed as much as one for $1,000 worth of property.

It is believed that a carefully considered bill, along the lines indicated, would produce the needful amount of revenue. These additional taxes may be readily repealed in the event that the reforms suggested, together with those that may occur to you, should materially lessen expenses.

PENITENTIARY.

The reports of the wardens of these two institutions will be placed before you. It is quite discouraging that 501 convicts are practically idle at a large expense to the State, and that in addition, the branch penitentiary is crowded beyond its healthful capacity.

The value fixed to constitute larceny a felony, is in many instances too small. The larceny of a hog of $4 value and of a horse, mule, jack or jennet of any value is punished by confinement in the penitentiary. Similar punishment is inflicted for the embezzlement of any sum; or the obtention of money or property of any value under false pretenses. While this is true, the larceny of goods, money, chattels or other property, does not subject the thief to punishment in the penitentiary, unless the same be of as much value as $20. This difference should not exist, but the standard be fixed at $20 in each instance. If this were done and the petty thief of all classes compelled as punishment to work the public roads in counties in which the crime is committed, we would have good roads and a much less expensive penitentiary. It is better to build roads than to enlarge penitentiaries.

Now, as to the employment of the convicts. In another portion of this message it is suggested that they be employed on the public works of the State. There are other ways, however, in which they might be properly engaged.

Why should they not manufacture their own clothing, shoes, hats, etc., and, for the purpose of enabling them so to do, be furnished with the proper tools and machinery? Or, as suggested by my late distinguished predecessor, they might at a small expense be employed in making brooms. Men can not be worked successfully inside the walls of a penal institution unless they are provided with some sort of machinery.

There should be a steward at each penitentiary, charged with the purchase of supplies from the best and lowest bidder (as hereinafter set out under the head of Charitable Institutions), his contracts being subject to inspection and approval by the warden. To place the duty of purchasing supplies upon the warden, who has so may pressing demands on his time, is unjust both to him and the State; and the Sinking Fund Commissioners, each of whom has enough to occupy his attention, can give but a casual inspection to such matters. As a general rule it is more desirable to dispense with than create offices, but in this instance it is believed there

would be annually saved a much larger sum than the salary of the official.

ROADS.

The State, as a rule, has paid but little attention to the establishment and maintenance of public roads. Either the present system is defective or its provisions not enforced. If persons convicted of misdemeanors were compelled to work out their fines on the county roads it would prove quite beneficial.

I can not undertake to enter into a thorough discussion of this subject, but earnestly call your attention to it. Good roads are of great benefit to those who are compelled to ship merchandise or produce, and as has been well said by an eminent writer, are "indubitable evidences of thrift and a high order of civilization."

ARBORICULTURE.

In many portions of the State the forests are well preserved, while in others (the earlier settled portions) the land is almost denuded of trees.

Your attention is called to the forestry law of other States, and I trust you may enact some legislation preventing the wanton destruction of trees, and in some measure looking to the gradual planting and growth of new forests and groves.

SALES FOR TAXES.

The law allows the sheriff $2 per list for advertising sales for taxes. These advertisements in most, if not all instances, may be embraced in a single line at a cost not exceeding ten cents. It is recommended that the law be altered so that this unjust burden may be removed from the tax-payer.

PRIVATE SANITARIUMS.

Complaint of serious character has been lodged against one of the sanitariums of this State. It is suggested that a law be enacted requiring institutions of this character to be thoroughly inspected, and throwing such safeguards around the patients as will prevent the improper reception or detention of persons who should not, of right or propriety, be confined therein.

JUDICIARY.

The Criminal Code requires the personal presence of those charged with felonies during the trial, and that they shall be placed in custody during adjournments unless their bondsmen agree to be bound on the bond, and when the case is given to the jury that the defendant be placed in charge of the jailer.

As regards misdemeanors, the rule is different. Bonds should be required for the attendance of defendants in those cases at the beginning of and during the trial, and when the case is submitted to the jury the defendant should be placed in the hands of the officer. There is no reason why one able to give bond should be allowed to go at large after submission to the jury, and another less fortunate be placed in charge of an officer.

The only effect of this statute, is to give time in the one instance until influential friends are enabled to ask remissions by the Governor and the defendant thereby permitted to escape committal, while those less fortunate are promptly confined in jail.

MOBS.

The prevalence of mob violence in Kentucky is deplorable. Nothing has so much injured the State's reputation abroad and nothing so seriously retarded immigration and material prosperity. No excuse can be made for this cowardly practice.

I suggest that a statute be enacted providing severe penalties against all persons who, directly or indirectly, by word or act, encourage such atrocities.

Freedom of speech and of the press does not imply unbridled license. The right to endorse violations of law and encourage crime does not exist anywhere in good government. The press of the United States, however, is denouncing in unmeasured terms the late crimes committed in Marion county, and we can not hope to attract peace-loving and law-abiding people to the State if such inhuman practices go unpunished.

IMMIGRATION.

That the present law in the United States concerning immigration should be carefully remodeled, and the tide of worthless and dangerous people flooding our shores be stayed, is admitted by all

sober-thinking men. The respectable and industrious element of foreigners is who have found homes in this republic, appreciate this fact no less than native-born citizens. Every worthless immigrant only reduces the wages of some deserving laborer. Good citizens, of whatever nationality, are interested in preventing the landing of paupers, criminals and law-breakers. The naturalization laws should be carefully revised, so that as nearly as possible undeserving persons should be denied citizenship.

It might be of benefit if your honorable body would request our Senators and Representatives in Congress to take some steps to remedy this evil.

But while it is necessary to prevent the comparatively indiscriminate coming of such persons among us, the State is deeply interested in attracting upright, industrious persons to its citizenship, and the establishment of a Bureau of Information for the accomplishment of that end would doubtless prove most beneficial.

FEDERAL COURTS.

I am informed that in September, 1895, J. A. Tompkins, who was one of the posse of Deputy United States Marshal Sloan, killed Richard Lawrence in Clinton county, Kentucky, and was, at the October term of the Clinton Circuit Court, indicted for murder. I am also informed that such killing was not done while Tompkins was in the discharge of his duty as a member of the posse. Subsequent to the indictment, Tompkins filed a petition in the United States Circuit Court at Louisville under Section 643 of the United States Revised Statutes, claiming that at the time he did the killing he was in the actual discharge of his duty as a part of the posse aforesaid, whereupon the case was docketed in that court and an order made and served upon the Clerk of the Clinton Circuit Court, ordering him to transmit the record to the United States Circuit Court, and commanding the State to proceed no further. A motion was made to remand the case to the State Court and overruled, and a motion to file an answer controverting the statements of the petition was also overruled, it being claimed that the United States Court had jurisdiction to try him, but intimated that if the act appeared not to have occurred whilst in the discharge of his official duty, he would be remanded to the State Court.

The practice of the United States Courts is to defend its officers when it appears that they have acted within the line of their official

duty. Hence, on this trial there will be no prosecution in this case unless our State officers are enabled in some way to obtain the attendance of witnesses.

The Commonwealth's Attorney of that district, with commendable zeal, has followed the case to the United States Circuit Court, but has no means of securing the attendance of witnesses, the United States Court declining to pay for their attendance as there is no statute authorizing it.

I recommend that you immediately enact a law such as will cover this and all similar cases that have arisen or may arise, enabling the Commonwealth to protect her citizens through her own courts.

EXEMPTION LAW.

The present exemption law exempting $50 in favor of those who work for wages, is rendered substantially inoperative by reason of the proviso that no exemption shall exist as against debts for food, raiment, fuel, medicine or house rent.

Many of these wage-workers have no property exempt from execution and under the attachment laws their wages are continually being attached, in many instances without just cause, and large sums consumed in cost upon the ground that they have no property subject to execution or not enough thereof to pay the debt sued for.

I suggest that the exemption be increased to $75 without exception, and that this exemption, when claimed, shall prevent the party from claiming any personal property as exempt from execution in addition thereto.

CHARITABLE INSTITUTIONS.

As already stated, the balance unpaid on appropriations to enlarge building of charitable institutions is $176,000 and the unpaid expenses for last quarter $113,000. The helpless and unfortunate condition of the inmates of these institutions demands your prompt attention.

The Superintendent of the Central Lunatic Asylum reports that there is no room for any more colored lunatics in any of the State asylums. An examination will show that, in proportion to population, there are not as many colored as white lunatics in the various asylums.

Superintendent Pusey reports that the appropriation for enlargement of buildings for the whites at the last General Assembly has enabled the construction of buildings which will make ample provisions for them for several years to come. He also expresses the opinion that an appropriation of $30,000 would erect buildings for 130 colored patients, and says that there are now on the ground 500,000 brick with which to begin the work. It is earnestly recommended that you investigate this matter and make such appropriations as you think necessary to insure proper accommodations for these unfortunate people; or in default of this, that you allow the use for colored persons of a portion of the unoccupied buildings now finished for the whites.

There is a remarkably larger percentage of lunatics from some localities in the State than from others, so much so as to awaken the suspicion that there are possibly many confined who are not lunatics, but who under the statutes are idiots and are not dangerous or uncontrollable. The law regarding inspection in this respect seems definite, but your attention is called to the subject for such investigation and further legislation as you may deem proper.

The present law requires the steward of the various asylums, by direction of the Superintendent, to purchase and furnish all needful supplies, and that they shall be bought where they can be bought the cheapest, due regard being paid to quality. I think the law should be so amended as to require stewards to send a list of groceries, breadstuffs, clothing, sheeting, blankets, towels, furniture and furnishing goods, meats (except fresh meats) necessary to be purchased to at least six wholesale houses, and request sealed bids to be delivered to the Superintendent, when he, the steward and receiver, or any two of them in case of disagreement, shall accept the best and lowest bid, all such bids to be then filed, together with the report by them as to which has been accepted, with the Commissioners, and retained by them. This rule, however, should not prevent any person from making a bid who may desire; but all of said bids should be opened at the same time and place. This should not apply to any small purchases that may necessarily have to be made from time to time. In this way all favoritism and fraud might be prevented. I do not mean to indicate that any impropriety has been indulged, in the purchasing of supplies, but this furnishes no reason why the interest of the State should not be fully protected.

It is urged in many quarters that the per capita allowance of

$150 to lunatics is extravagant. It might not be impolitic, considering the present condition of affairs, for you to make investigation of this charge. We should not practice economy to the detriment of this unfortunate class, but if they can be comfortably and respectably maintained for less, the allowance should be curtailed.

There are various suggestions made in the different reports filed before you which it is unnecessary for me to repeat, and all of which will doubtless have your thoughtful attention.

PUBLIC HEALTH.

The report of the Board of Health has been submitted to your honorable body and will doubtless be carefully read, as it certainly deserves to be. It is believed that Kentucky has the best organized, most economical and effective Board of Health in the United States.

And in this connection, I desire to call your attention to the sale of cigarettes and cigarette paper. The medical profession almost, if not entirely, condemns the use of these articles. The most serious deterioration of body and mind, especially among the youth, is caused by the use of these slow, but deadly poisons. Out of their use grows an appetite for strong drink and opiates in their most dangerous forms, which eventually leads to destruction. In conformity to the request of many of the best citizens of the Commonwealth, I recommend that the sale of cigarettes and cigarette paper be prohibited.

TURNPIKES.

Dividends on turnpike stock are rendered impossible in some instances, and are materially reduced in every instance, on account of the practice of the directors and other officers, with members of their families, failing to pay the toll. It has become a custom for these gentlemen to give passes over the roads for which they act to officers having in charge other roads of a similar character. This should be forbidden, and a fixed allowance made to the directors for services rendered at each meeting, with a limitation on the number of meetings annually.

VACANCY IN OFFICE.

Section 152 of the State Constitution provides that vacancies in all offices * * * "for districts larger than a county" shall be filled by the appointment of the Governor.

If this section be literally construed, the anomaly is presented of the Governor filling vacancies in all the thirty Circuit Court Districts, except four. It is seriously doubted whether such was the intention of the framers of the Constitution.

At the instance of my late distinguished predecessor, the General Assembly (Section 3758, Ky. Statutes) enacted a law removing all uncertainty as to the appointment of Circuit Judges.

Section 1528 of the Statutes, however, has involved additional complication, by providing that in case of vacancy in the office of Commonwealth's Attorney, the same shall be supplied by the Circuit Judge. Evidently this statute is in direct conflict with the Constitution, except, perhaps, as to districts not larger than a county. It is suggested that uniformity should exist in this matter and, for that purpose, that a law should be passel authorizing the Governor to fill all such vacancies.

STATE CAPITOL AND BUILDINGS.

The present State House and Mansion are not such as to commend themselves to the admiration of the public and are not in keeping with the progress of the age. Now that the protracted controversy concerning the location of the Capital has been settled, steps should be taken at as early a moment as practicable to erect such buildings as will not only be creditable to the State, but will afford ample protection to books and records and give necessary room for the comfortable and speedy transaction of business. The present Capitol is old and insecure—not fireproof—and in some respects regarded as dangerous to a portion of the officers who use it. The Executive Mansion is old, out of repair and uncomfortable, and the lower floors are sustained by props to prevent them from falling. Enough has been expended in repairing it to have built several splendid edifices. Its site is by no means eligible and its surroundings everything but cheerful or agreeable. The lot, however, I am assured is valuable for some purposes and could be sold for nearly if not quite enough to purchase a respectable dwelling.

There are more than five hundred idle convicts in the penitenti-

ary who are a burden to the tax-payers. The Constitution allows the State to employ them upon public works. Why not utilize them in the construction of a new Capitol, and thus save the State from maintaining them at a great cost and the people from taxation for that purpose, and to the extent that they may be utilized for such building give to the people some recompense for maintaining them?

By retaining the east wing, erecting a similar one on the west side of the old building, supplying the center with a comfortable structure and using convict labor, a new Capitol could be constructed for a comparatively small sum, in keeping with the dignity of the State and without serious burden to the tax-payers.

After estimates by architects upon the basis mentioned, or any basis your wisdom may suggest as best, a law might be passed in conformity to Section 50 of the Constitution, submitting the question to the people, and also providing for the making of contracts and completion of the buildings within a certain time after the election in the event the proposition should find favor.

I am convinced that if the proper effort is made to economize it will be found that the annual saving to the State will, within five years, amount to a much larger sum than the cost of these buildings.

ELECTIONS.

The ballot is the safeguard of republican institutions. Through its lawful and proper exercise alone can the will of the people be expressed. Every protection thrown around it, every effort to purify it, so that the humblest citizen may cast his vote untrammeled and have it fairly counted, is protective of good order, good government and the liberty of the people. The present system is a great improvement, but contains many imperfections, to some of which your attention is called.

1. Where registration is enforced, especially in large cities, it is said that regularly registered voters, in some instances, are falsely impersonated, and on this account persons, who are not entitled, vote, and in this way prevent legal voters from exercising their privileges. As to whether this charge be true I do not know, but the fact that such a thing might be done is sufficient to call for the enactment of such laws as will in some measure identify the lawful voter.

2. The intention of the ballot system was to enable every citizen to cast his vote in such a way as to secure perfect secrecy. In view of this intention it appears improper that in registering voters, the officer should have the right to ask and record their party affiliation. It is said that this is done upon the theory that in primary elections parties may be enabled to control their organization. In places where no registration is allowed, no difficulty is experienced in this matter, and none, I presume, would be experienced elsewhere. The party presenting himself to vote at a primary election might be sworn by the officers as to his qualifications, if demanded, and punished if guilty of false swearing.

3. Primary elections should be prohibited from being held at the same time or place of the holding of regular elections. They consume time and create confusion and undue excitement. The vote counted as cast, guaranteed, whether there is or is not a conflict with or affect the election of officers.

4. There is a diversity of opinion as to whether canvassing or examining boards have the right to pass on rejected ballots. This should be made plain and the right of every citizen to have his vote counted as cast guaranteed, whether there is or is not a contest. The law should be explicit that no citizen shall lose his vote on account of the technical failure of any officer to discharge a plainly ministerial duty when the officers of the election are satisfied that the ballot was in fact deposited.

5. The placing of the emblem or party device in a square, and then requiring the voter to make his cross-mark in the square beneath the emblem, has led to confusion and uncertainty. The emblem should be placed at the head of each ticket and a square beneath and entirely disconnected from it, and the cross-mark required to be made therein.

6. Article 13, chapter 41, of Kentucky Statutes, provides penalties against certain frauds in elections, many of which are dead letters because, Section 1594 prohibits conviction upon the testimony of a single witness, unless sustained by strong corroborating circumstances. Surely, such a safeguard as this is unnecessary, as the defendant may testify.

7. The practice of corralling voters and with money and whisky persuading them to remain away from the polls, is quite common.

The law should prevent this, and should in all such cases authorize the issuance of a writ of habeas corpus on the petition of any person, and on the trial thereof then and there to be had, re-

quire the Judge or Magistrate to release the person detained. In addition, laws should be enacted with severe penalties against the person or persons having the voter in unlawful custody.

8. According to the present law, when any party has failed to nominate a candidate by convention or primary election, upon a petition, signed by the requisite statutory number, any individual, however objectionable, may have his name placed under a party device. Frequently this may prove distasteful to the party and should not be allowed.

9. Section 1458 prohibits the Secretary of State from certifying and the County Clerk from placing the name of a candidate properly certified to have been nominated, on the ballot, whenever notified by such candidate that he will not accept the nomination. Section 1464 provides that in case of death, removal or resignation after the printing of the ballot that certain steps may be taken to meet the contingency. I suggest, that in either state of case referred to in the last named section, or in the case mentioned in Section 1458, it be made the duty of the Secretary of State or Clerk, to at once give notice to the Chairman or Secretary of the State Central, District or County Committee, and that pasters be provided and used in such cases and proper steps taken by the party organization such as will enable such party to supply the place as provided in Section 1464.

10. Section 1557 prescribes a fine of $50 and imprisonment in the county jail against any officer upon whom a duty is imposed in chapter 41, who shall wilfully neglect to perform the same, or who shall wilfully perform it in such a way as to hinder the object of the law. A glance at the many important duties which this section governs will demonstrate, that the punishment is entirely inadequate as to officers of registration and officers of regular and primary elections. Particularly is this true as to the duties assigned to the Secretary of State in certifying nominees; the Clerk in the proper preparation and distribution of stencils and ballots; the Sheriff in delivering ballot boxes; County Judge in the appointment of officers of election and giving the notice of same; the admission of unauthorized persons into the booth or within less than fifty feet of the polls; the counting of votes and the preservation of contested ballots. In this connection, I fail to see that any punishment is inflicted upon an officer of the election for wilfully and knowingly refusing to receive a legal vote. It is recommended that the law be carefully revised so as to severely punish all violators thereof, and make it sufficiently comprehensive to provide safety and secur-

ity for the voter and certainty that his vote will be honestly counted.

11. Section 1448 limits the appointment of officers of election to house-keepers. Many competent persons are excluded by this section and it should be repealed.

RAILROADS.

Foreign railroad corporations come into our State, avail themselves of the benefit of our laws, and yet promptly transfer every case that is transferable under the Federal Statutes to the United States Courts, which, in many instances amounts to a denial of justice to those who are too poor to leave their homes to prosecute their causes in a distant part of the State. Hitherto, under the interstate commerce provision of the National Constitution, these corporations have succeeded in defying State legislation. Might this not be remedied by the passage of a law providing, that no corporation, company or association, created or organized by any authority other than the laws of this State, whether acting by officers, agents or receivers, shall carry over any railway in this State, for pay, from any point in this State to any other point therein, either person or property, until the same shall become a corporation citizen, resident of this State, in manner as now or as may be hereafter provided by law.

LOCAL SELF-GOVERNMENT FOR CITIES.

It is urged, and I am satisfied truthfully, that many of the cities of the State are laboring under serious disadvantages by reason of the fact that the Constitution denies to them the right of local self-government. That it is quite difficult, if not impossible, to adopt any general system of municipal law or taxation that will give entire satisfaction, is apparent. The locality or surroundings in each and every instance should be consulted, as well as the advantages afforded cities of other States with which our own are brought into competition. The prosperity of the cities is largely the prosperity of the State, and the converse of this proposition is equally true.

No legislation can be had which will remedy this trouble. The only remedy is to change the Constitution.

It is recommended that your honorable body bring this matter before the people by proposing an amendment to the Constitution.

allowing cities of such classes as you may deem best, the right of local self-government concerning municipal taxation, with the distinct condition that the right of suffrage is not to be interfered with or abridged in any way. A fair discussion of the subject will be productive of good results and the people may at all times be trusted. I do not wish to be understood as favoring any change of State or county taxation, but only to submit the question as to city taxation.

CHICKAMAUGA AND CHATTANOOGA PARK.

The United States Government has purchased the ground occupied by the contending armies near Chattanooga, during the battle of Chickamauga, and made a National Park of same.

Nearly every State, perhaps all, save Kentucky, has erected monuments to perpetuate the deeds of its troops and indicate their position during the conflict. In that battle Kentucky had seventeen Union organizations, of which thirteen were infantry, and four cavalry; and nine Confederate organizations, five infantry, two cavalry and two artillery. Perhaps there was some artillery attached to the Union forces also. On that day, Kentuckians on either side, won imperishable renown. It is a source of mortification that up to this time the State has taken no steps toward the recognition of the gallant conduct of her distinguished sons.

That economy should be practiced is true, and that our present financial condition is far from satisfactory is equally true; but some little hardship should be endured by the living, rather than injustice done the illustrious dead. The State can not at this time make such an appropriation as the subject demands. We could not undertake to erect monuments to indicate the position occupied by the regiments, but might, as I understand the State of Tennessee has done, with an appropriation of $10,000, erect one monument each to the infantry, cavalry and artillery engaged on either side, and denote the position of regiments and brigades by simple and inexpensive markers. A commission should be created, composed of an equal number of soldiers of each army, to see that this fund is impartially and carefully expended in the recognition of both Union and Confederate soldiers.

I favor any action that may blot out the unpleasant memories of the past and bind in harmony and brotherly affection the late opposing sections of our beloved country.

EDUCATION.

Monarchies may be preserved by the exercise of power, but upon an educated and intelligent people depends the perpetuation of republican principles. It is, therefore, of prime importance that Kentucky should look well to the education of her youth. The State tax is as liberal as the present financial condition will allow. Local taxation, however, has proven by no means effectual, and our system is far behind that of many States of the Union. This comparative failure of local taxation is doubtless in part due to the small and isolated districts in many sections of the State. The trouble might be materially lessened, by levying local taxation on counties and dividing the amount thus secured per capita among the various districts; or much good might be accomplished, by making magisterial districts units for taxation with division per capita among school districts therein contained. In either case, there should be one competent member of the County Board of Education in the district who with the other members of the County Board of Education and County Superintendent, as chairman, might act. Members of this County Board should possess certain specified qualifications and have general supervision of educational affairs in their respective districts; the entire board, however, to have control of the affairs in the county, and to meet at stated times and adopt rules for the educational affairs of the county, as well as, the employment of teachers for the several districts. The compensation of these members should be nominal, by releasing them from per capita tax, road service, etc. Owing to the contentions that have grown out of the election, in many instances, of incompetent trustees, the employment of teachers, etc., this change would doubtless prove very beneficial. The present trustee system should be abolished. In each sub-district as now organized there might be one trustee charged with minor affairs. He might nominate teachers for the sub-district in which he lives, subject to the approval of the County Board, and these trustees might be chosen by election.

Something should be done also, to secure better attendance. Doubtless, improved schoolhouses and accommodations, and more local aid, would, to some extent, assist in this matter. There should be steps taken to insure from twelve to fifteen weeks of school advantages to children between eight and sixteen years of age who are compelled to labor for their support. Guardians, should also be required to give children under their charge similar advantages.

By all means there should be established and maintained a minimum school term of not less than seven months in every district in the State. Your attention is called to the very able report of Superintendent Thompson, which contains many valuable suggestions.

It is said that Kentucky pays twice as much for school books as States north of us. If this be true, such laws should be enacted as will remedy it. If uniformity in text-books should be required, the prices would be necessarily reduced.

FEEBLE-MINDED INSTITUTE AND HOUSE OF REFORM.

For many years complaints have been made concerning the Feeble-minded Institute, and it has been claimed by many familiar with its operations that the large expense of maintaining it is not compensated by the material good effected. As to the younger children confined therein, who are idiots, they might be cared for by the respective counties of their residence, while those who are lunatics might be sent to the asylums, as in other cases.

It is vastly more important to save from ruin and direct in proper paths the steps of wayward children of natural intelligence, and in some instances of fair acquirements, who, by force of circumstances or want of proper restraint and advice, have become criminals, than to expend efforts for the improvement of those who have practically no intelligence and who at most can not be made self-sustaining or responsible.

Prior to 1869 Hon. Harry Todd, keeper of the penitentiary, recommended, and in that year Governor Stevenson besought, the law-making power to erect a house of reform. Time and again since similar relief has been asked for these unfortunate youths.

Our present Constitution, Section 252, makes it your duty "to provide by law, as soon as practicable, for the establishment and maintenance of an institution or institutions for the detention, correction, instruction and reformation of all persons under the age of eighteen years, convicted of such felonies and misdemeanors as may be designated by law. Said institution shall be known as the House of Reform."

For many years, mere children have been confined in the penitentiary, and a number are now confined there, despite the fact that many have been pardoned by the various Governors on account of their extreme youthfulness. These children have been, and are now being, associated with old and hardened malefactors, and

doubtless many who might have been reformed have become the most accomplished criminals by reason of superior advantages and training in the penitentiary.

It is respectfully recommended that the Feeble-minded Institute be abolished, and the inmates returned as lunatics are returned under the present statute to their friends, or to the counties from which they came; and that the building be turned into a House of Reform, and such changes, together with regulations, enacted, for its management as you may consider best.

INSPECTION OF PUBLIC OFFICES.

Section 4, article 2, chapter 108 of the General Statutes, provides, that a committee composed of members from both Houses shall be appointed within ten days after the organization of the General Assembly, at every regular session thereof, whose duty it shall be personally to examine into the Treasury; examine all papers or vouchers upon which money has been paid for each of the preceding two years; ascertain the amount of money paid into and paid out of the Treasury, and the amount of public money on hand," etc., etc. The same section requires the Auditor's office to be investigated.

This seems to have been omitted from the Kentucky Statutes, but is yet in force, as those statutes have not been adopted as containing all the law of the State.

Governor Buckner called attention to the fact that this statute had been overlooked, and requested that all the State offices should be carefully inspected and reported upon. I, likewise, call your attention to this statute, and repeat his recommendation.

LIBELS.

Of late, numerous untruthful stories concerning the commission of crime in Kentucky have been given currency by unprincipled correspondents, all to the great detriment of the State. I recommend, in order to restrain these irresponsible persons, that a law should be passed providing severe punishment for all persons who wilfully state, deliver or transmit to any manager, editor, publisher, reporter or other employe of any newspaper, magazine, publication, periodical or serial, any falsehood concerning any person, corporation or community.

STATE APPORTIONMENT.

The fact that all political parties, more or less, have been guilty of gerrymandering in order to perpetuate themselves in power on the one hand, and impair or destroy the rights of the minority on the other, furnishes no excuse for this iniquitous practice. Such was the view of the framers of our present Constitution, and in order to prevent such a wrong the following sections were adopted:

"Section 116—The General Assembly shall, before the regular election in 1894, divide the State by counties, into as many districts, as nearly equal in population and as compact in form as possible, as it may provide shall be the number of judges of the Court of Appeals."

"Section 128—At its first session after the adoption of this Constitution, the General Assembly having due regard to the territory, business and population, shall divide the State into a sufficient number of judicial districts to carry into effect the provisions of this Constitution concerning Circuit Courts. * * The number of said districts, excluding those in counties having a population of 150,000, shall not exceed one district for each 60,000 of the population of the entire State."

"Section 33—The first General Assembly after the adoption of this Constitution shall divide the State into thirty-eight senatorial districts, and one hundred representative districts, as nearly equal as may be in population without dividing any county, except when a county may include more than one district. * * Not more than two counties shall be joined together to form a representative district: Provided, That in doing so the principle requiring every district to be as nearly equal in population as may be, shall not be violated. * * If in making said districts inequality of population should be unavoidable, any advantage resulting therefrom shall be given to districts having the largest territory."

The rules prescribed are plain. Was the present apportionment made within these rules, or as nearly so as practicable? If so, the Constitution has been complied with, and no other apportionment can be had for ten years after these were made. If, on the other hand, the Constitution has been disregarded, no apportionment has been made, for that which is unconstitutional is of no effect. The authority, it is true, was given to be exercised at the time mentioned, but not prohibited from being exercised thereafter. If for any reason it was not then exercised, or if exercised, so done in violation of the organic law, the General Assembly, now has the right, and it is its duty to exercise it in a proper way.

To make a new apportionment applicable to persons now holding office would produce confusion and injury, and therefore any new apportionment bill should not take effect until after the expiration of the terms of those now in office. Doubtless, if this be not done the courts will be called upon to pass on the question, and far more trouble and confusion result than if the matter be now properly adjusted. It may be said, that if the apportionment is void, the present General Assembly is not a legal body. This argument can not be sustained because it would produce anarchy. Every government has the inherent right to maintain its existence, otherwise there could be no government. The General Assembly, upon whom was devolved this important trust, has ceased to exist and can not be called into life. The present General Assembly, therefore, if an unconstitutional apportionment has been made, should correct the evil in the interest of good government.

First, as to the Appellate Districts. It will be seen that, according to the census of 1890, under which they were created, their population and area is as follows:

District.	Population.	Area. Sq. Miles.
1st	293,087	6,327
2d	277,026	6,866
3d	290,911	7,987
4th	180,244	375
5th	307,835	6,033
6th	261,263	4,353
7th	227,330	7,683

The mere statement of population and area plainly show that in apportioning these districts, the constitutional regulation "that due regard should be had to territory, business and population" was not obeyed.

Clearly, it was the intention, as to the Circuit Court Districts, to make them as nearly 60,000 in population as was practicable. An inspection of the following table will show whether that intention was respected:

District.	Population.	Area. Sq. Miles.
2d	32,338	580
28th	73,061	2,540
21st	35,973	1,200

District.	Population.	Area. Sq. Miles.
20th	70,402	1,747
25th	55,728	951
3d	70,223	1,842
26th	29,754	1,518
29th	62,570	2,101
11th	50,086	1,181
10th	72,050	1,767
18th	48,708	1,025
6th	75,167	1,467
15th	56,470	1,187
1st	66,208	1,420
13th	55,082	983
7th	69,359	1,718
12th	58,049	1,402
19th	75,934	1,567
22d	35,698	252
14th	67,169	963
23d	42,122	1,418
8th	65,801	1,665
24th	49,308	2,090
4th	58,284	1,516
30th (4 Judges)	188,598	375
9th	60,845	2,002

But improper as this apportionment is shown to be, there is another fact connected with circuit apportionment infinitely more so.

Section 138, Constitution declares, "each county having a city of 20,000 inhabitants, and a population, including said city, of forty thousand or more, may constitute a district," etc. The manifest meaning of the section is, that the county must have a population of at least 40,000, or it can not be made a district; and not even then, unless the county contains a city of 20,000 population.

The United States census of 1890 shows that Fayette county had a population of 35,698; yet in the face of this, the district was established. In order to carry out the intent of the organic law, when the Legislature regulated salaries in districts contemplated by Section 138, supra, they placed the limit of the compensation of sheriffs and Circuit Court clerks at not exceeding $3,000 annually, after payment of deputies, assistants and expenses of office. Subse-

quent to the enactment of this statute a rule was issued by the Commonwealth against the sheriff and county clerk of Fayette county to show cause why they should not name their deputies so that the judge might fix their salaries pursuant to the statutes (Section 1776.) They responded by stating, that Fayette county had never had as much as 40,000 population. This averment was not and could not have been truthfully denied.

The Circuit and Appellate Court each held that the salaries could not be fixed, and by implication held that as there was no denial that the population of Fayette county was less than 40,000, the statute could not be enforced. (Commonwealth vs. Chinn, 17 Ky. Law Rep., 447.) So that, for the purpose of allowing a Circuit Judge and Commonwealth's Attorney to Fayette, the General Assembly assumed that the county contained a population of 40,000, although it contained a population of only 35,698; but when the necessity for fixing the allowance of its Sheriff and County Court Clerk so that all the proceeds of their offices, over and above the limit fixed by statute, might go into the coffers of the State, to assist in paying for its support and thus relieve the tax-payers, the court very properly refused to enforce the law because it was a district of less than 40,000 population. To inflict the salaries of a Judge and Commonwealth's Attorney upon the people, it contains a population of 40,000; but to prevent paying into the Treasury the salaries of the Clerk and Sheriff above $3,000, for the benefit of the people, it is less than 40,000—the tax-payers being the sufferers in each instance.

Fayette county not having a population of 40,000, including the city of Lexington, at 20,000, at the time of the apportionment of which it was an inseparable part, the entire apportionment of the State by reason of that fact alone is unconstitutional. The Fayette Circuit Court may not be assailed judicially, but a new apportionment based on the flagrant violation of the Constitution would be undoubtedly both valid and proper.

The apportionment of senatorial and representative districts will be found even more objectionable than those of Appellate and Circuit Court Districts, as shown by the following table:

District.	Population.	Area. Sq. Miles.
8th	43,007	660
6th	57,623	1,258
10th	37,674	1,052

District.	Population.	Area. Sq. Miles.
7th	54,851	1,556
23d	34,533	712
28th	46,087	1,007
27th	35,698	252
4th	48,501	995
20th	46,911	650
19th	52,350	1,127
21st	37,324	762
18th	51,896	1,179
14th	39,698	985
9th	51,444	455
22d	30,174	681
16th	54,208	1,785
34th	42,309	1,404
32d	52,860	1,275
2d	56,076	980
33d	85,167	4,254
38th	78,856	part Jeff. Co.
17th	99,244	3,185

Unjust as this apportionment is, the representative apportionment is infinitely more so. Notwithstanding, the provision that no more than two counties shall be joined together to form a representative district, having in view the principle requiring every district to be as nearly equal in population as may be, the four counties of Bell, Harlan, Leslie and Perry, with an area of 1,628 square miles and a population of 26,804, constitute one district, while the county of Larue, with a population of 9,433, and an area of 260 square miles, constitutes another.

The three counties of Clay, Jackson, and Owsley, with a population of 26,683, and an area of 1,065 square miles, are given one representative, while the county of Hancock, with a population of 9,214, and an area of 200 square miles, is accorded the same privilege. The counties of Boyd and Lawrence, with a population of 31,735, and an area of 655 square miles, are given one representative, while the county of Jessamine, with a population of 11,248, and an area of 162 square miles, is accorded the same representation. The counties of Whitley and Knox, with a population of 31,352, and an area of 930 square miles, are allowed one representative, while the

county of Woodford, with a population of 13,380, and an area of 247 square miles, is given the same privilege.

The counties of Laurel and Rockcastle, with a population of 21,588, and an area of 730 square miles, have one representative, while the county of Anderson, with 10,610 population, and an area of 200 square miles, is accorded the same representation. The counties of Breathitt, Lee and Magoffin, with a population of 24,106, and an area of 978 square miles, have one representative, while the county of Bracken, with a population of 12,369, and an area of 200 square miles has the same representation.

The county of Christian, with a population of 34,118 and an area of 708 square miles, has one representative, while the counties of Daviess, with a population of 33,120 and covering 410 square miles, and Warren, with a population of 30,158 and covering 530 square miles, have two representatives each. The county of Pulaski, with a population of 25,731 and an area of 870 square miles, is allowed one member, while the county of Meade, with a population of 9,484 and 332 square miles, has the same representation.

The population allowed under the Constitution for each member would be approximately about 18,500. Of course this can not be exactly regulated, but should be as nearly so as possible. Hancock, Meade and Larue, with an aggregate population of 28,131 and an area of 792 square miles, have three representatives, while Bell, Leslie, Harlan, and Perry, with a population of 26,804 and an area of 1,628 square miles, have in the aggregate only one. Hancock, Meade and Larue, having 28,131 population and an area of 792 square miles, have three members while Whitley and Knox, with a population of 31,352 and an area of 930 square miles, have only one. Meade, Hancock, Boyle, Larue and Jessamine, with a population of 52,367 have five representatives, while Pulaski and Christian, with a population of 59,919, have only two.

Many other instances might be referred to, but these will suffice to show how palpably the organic law has been disregarded. By embracing four counties in one district, with an area of 1,628 square miles, the Constitution is again violated, in that, it requires "if * * * inequality of population should be unavoidable, any advantage resulting therefrom shall be given to districts having the largest territory."

The mountain counties of the State, with their vast wealth of mineral and timber, have been robbed of their share of influence, yet they have merely begun a development which, if unfettered

and encouraged, will do more to build up the wealth of the State than the improvement of any other section.

I call the attention of your honorable body to this plain and inexcusable violation of the Constitution, this inequality and injustice in representation, with the hope that you will take such steps as the gravity of the question demands. I speak in no partisan spirit, but only in behalf of constitutional freedom and equality, asking that no advantage be given any section or party, but that a fair and just apportionment be made to take effect upon the expiration of the terms of the present incumbents. There could be no more fitting and proper time to do this than the present, while each party has a majority in one branch of the General Assembly, and may thus act each as a check on the other. If not adjusted now, the time may come when both Houses may be under the control of a different party to that which made the present apportionment, and when party spirit may cause a partisan apportionment to be attempted and possibly effected, though I promise now if I am then the Chief Executive of this State it shall not be done with my consent or approval.

And now, in conclusion, allow me to indulge the hope, as I entertain the belief, that we may work together harmoniously for the general welfare of the State, that at the expiration of this session much good shall have been accomplished for the Commonwealth, and that each and all of you, after your pleasant sojourn at the Capital, may be spared to return to your respective homes, and that prosperity and happiness may attend you through life.

I am with great respect,

WILLIAM O. BRADLEY,

Governor of Kentucky.

MESSAGE ON THREE COURT SYSTEM.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., January 22, 1896.

Gentlemen of the Senate and House of Representatives:

Allow me to call your attention to the fact that what is known as the "Third Court System," in Kentucky, is in many instances proving a costly experiment.

It may be, and doubtless is, true, that in cities or certain counties, more than two terms of the Circuit Court annually are necessary, but in many of the Circuit Districts two terms each year are ample for the transaction of business. The present system, which can not be changed save by an amendment to the Constitution, increases grand and petit jury fees, and witness fees as well as largely augments annually the number of appeals prosecuted to the Court of Appeals.

I respectfully suggest that an amendment to the Constitution be proposed to the people, repealing section 131 of the Constitution, and leaving the regulation of terms of Circuit Courts in the discretion of the General Assembly.

Very respectfully,

WILLIAM O. BRADLEY.

MESSAGE ON MOB VIOLENCE.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
January 27, 1896.

Gentlemen of the Senate and House of Representatives:

I know that you, in common with all good citizens, deplore mob violence. I respectfully suggest that the enactment of a law making the county where such a crime is committed liable in the sum of twenty-five hundred dollars to the administrator, widow or heirs of the victim, upon prescribed legal proceeding, would prove effectual. Such a law has been found of great benefit in some States of the Union.

Very respectfully,
WILLIAM O. BRADLEY,

VETO BILL FOR BENEFIT OF CERTAIN SHERIFFS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, February 28, 1896.

Gentlemen of the House of Representatives:

I herewith return without approval House Bill 145. Said bill is as follows:

"An act making eligible to the office of sheriff persons filling that office on or before January 1st, one thousand eight hundred and ninety six, and who failed to execute bond and take the oath of office on or before the first Monday in that month, and extending the time for such persons to execute bond and take the oath of office to March the fifteenth, one thousand eight hundred and ninety-six. Whereas, some persons who were duly elected by the people as sheriff of their counties and were holding the office on January the sixth, one thousand eight hundred and ninety-six, and failed from a misapprehension of the law, from oversight or other cause, to renew their bond

and take the oath of office on or before that day, pursuant to the provisions of the law.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. That all persons holding the office of sheriff during the year one thousand eight hundred and ninety-five, who failed to renew their bond and take the oath of office on or before the first Monday in January, one thousand eight hundred and ninety-six, shall be eligible to hold said office, and shall not be disqualified therefor by their said failure; and such persons are hereby authorized to execute the bond required of sheriffs and take the oath of office on or before March the fifteenth, one thousand eight hundred and ninety-six; and from the time of the execution of such bond and taking the oath of office, such persons shall be the sheriffs of their respective counties, and their acts as such shall be as valid and binding as if they executed bond and took the oath of office on or before the first Monday in January, one thousand eight hundred and ninety-six. Whereas, some persons holding the office of sheriff in their respective counties in the year one thousand eight hundred and ninety-five failed to execute bond and take the oath of office on or before the first Monday in January, one thousand eight hundred and ninety-six, but did so soon after, and some confusion would result from their disqualification, an emergency is hereby declared to exist, and this act shall take effect when approved by the Governor."

Section 4130, Kentucky Statutes, requires that the sheriff on or before the first Monday in January succeeding his election, and on or before the said day annually thereafter, shall enter into bond, with surety for the faithful performance of his duties.

Section 4131 provides: "That if such bond is not executed within the time prescribed, the sheriff shall forfeit his office and the county court may appoint a sheriff to fill the vacancy until a sheriff is elected, or may appoint a collector for the county of all moneys due the State and county or taxing districts authorized to be collected by the sheriff, or it may appoint a separate collector of the moneys due the State, county, or any taxing district thereof during the vacancy in the office of sheriff, and in the event of the county court failing for thirty days to appoint a collector of money due the State, the Auditor of Public Accounts may appoint a collector."

And so anxious was the General Assembly to emphasize the failure of the sheriff to execute bond in the time and manner required by section 4132 of the statute it was provided that no sheriff, who had

forfeited his office by reason of such failure, should be appointed collector, deputy collector, elisor, or deputy elisor; or, if such appointment should be made he should receive no compensation.

The wisdom and propriety of these statutes are manifest. Nothing is more important to the State than the prompt collection and payment into the Treasury of its revenue. Every officer must be presumed to know the law, and especially should this rule be applied when statutes have been enacted for so long a time as these.

It is immaterial whether or not the contention that the renewal bond is not embraced in section 4132 is correct, because if it is not no legislation is needed, and if it is, none can be properly had.

By section 59 of the Constitution the General Assembly is prohibited from passing any special acts concerning the subjects mentioned in its various subdivisions.

Among the subjects so named are the following:

Subsection 13.—"To legalize, except as against the Commonwealth, the unauthorized or invalid act of any officer or public agent of the Commonwealth, or of any city, county or municipality thereof."

Subsection 15.—"To authorize or to regulate the levy, the assessment or collection of taxes; or to give any indulgence or discharge to any assessor or collector of taxes, or his sureties."

The plain purpose of the bill is to validate the action of such sheriffs as have given bond since January 1st, and also those who may give bond at any time after its passage on or before March 15th next, not only as against the Commonwealth, but all persons; as well as to invalidate the acts of such sheriffs as have been appointed and nullify the action of courts of record in making appointments.

The sheriff is a collector of revenue. By failure to execute bond, he is by law deprived of this right. It is clearly an indulgence to pass such a law as will allow him to remedy his negligence. Again, where such officers have been removed and others appointed and qualified, the effect of the act would be to vacate the tenure of those who are without fault, in order to reward those who have failed to perform a manifest statutory duty, besides throwing into confusion, uncertainty and litigation all the acts of such as may have been appointed. Such legislation would be in contravention of the fundamental law. That this act is special can not be doubted. It is not in the interest of all the sheriffs, for it specifically states that "some persons have failed," etc. The only purpose is to relieve "some

persons," and it does not appear that these persons are even numerous. In point of fact but very few have failed in this respect. Not only so, the act applies only to the present year, and does not make March 15th the time when all such bonds are to be executed in the future.

This character of legislation is a premium on negligence, and will lead to a repetition of the evil sought to be remedied.

Respectfully,

WILLIAM O. BRADLEY.

VETO BILL GIVING ATTORNEY-GENERAL A STENOGRAPHER.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1896.

Gentlemen of the House of Representatives:

Herewith I return House Bill No. 348 without my signature.

The Commonwealth is largely indebted and up to this time no means of liquidation have been provided.

There are too many offices in Kentucky already and I can not approve of the creation of another.

WILLIAM O. BRADLEY.

Governor of Kentucky.

VETO OF BILL DEFINING DUTIES OF CERTAIN COUNTY CLERKS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 21, 1896.

I decline to approve Senate Bill No. 54, entitled, "An act concerning the duties of county clerks in all counties containing a population of seventy-five thousand or over," for the following reasons:

The bill, by implication, shows that there are counties which do not contain seventy-five thousand or more population, and this fact is known from records and statistics in the departments of government as well.

It affects only a portion of the territory of the State, and establishes a different rule in such territory to that prevailing in other portions of the State. Section 59 of the Constitution prohibits the passage of local or special acts concerning the subjects named or any of the purposes named, and in all other cases where a general law can be made applicable."

The act is local and special, and there is no reason why the object attempted to be reached might not have been attained by a general law applicable to all the counties in the State.

WILLIAM O. BRADLEY,
Governor of Kentucky.

DEFENSE BEFORE SENATE COMMITTEE CALLING OUT STATE GUARD MARCH 16, 1896.

Gentlemen of the Committee:

At the outset, I desire to record my protest against your attempted exercise of jurisdiction not possessed.

The three great divisions of government act independently of each other, except in such cases as the Constitution expressly provides to the contrary.

I have acted as Governor of the Commonwealth charged with the execution of the laws and the keeping of the public peace. If, in attempting to do this, I have overstepped the line which separates my department from yours; or, if I have acted corruptly or without right, then as Governor I am liable to articles of impeachment by the House and trial by you. The Constitution plainly defines the remedy and punishment of the executive or judicial officers of the Commonwealth, who acting or claiming to act, in their official capacity, transcend their authority. The Senate constitutes only one-half of the legislative power, and is unable to act without the co-operation of the House.

The statute under which this proceeding is being had is as follows: Section 1981, Kentucky Statutes:

> "The members of the General Assembly shall in no wise be disturbed or embarrassed in the great and important business of legislation. They shall not, directly or indirectly, by any ways or means, be arrested, menaced or otherwise disturbed during the existence of their constitutional privileges, except on legal process for treason, felony, breach of the peace or misdemeanor."

A member of either branch of the General Assembly guilty of "a breach of privilege may be expelled, censured, or fined by the concurrence of two-thirds of the members present."

Section 1982. "Either House of the General Assembly shall "have power to punish any one by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, either or both, for a contempt or breach of privilege.' Contempts or breach of privileges SHALL BE INQUIRED INTO

FIRST BY A SPECIAL COMMITTEE APPOINTED FOR THAT PURPOSE, BEFORE WHICH THE ACCUSED SHALL HAVE THE RIGHT TO BE HEARD BY HIMSELF AND COUNSEL, AND HAVE COMPULSORY PROCESS TO COMPEL THE ATTENDANCE OF WITNESSES."

The two sections have no application to the acts of the executive, but to personal and individual acts of members and others. Conceding, however, that the first section quoted has reference to official acts, it is submitted that the facts appearing in this investigation clearly establish my innocence. With the affidavits of the two presiding officers and others, and uncontradicted facts appearing to me from other sources, showing that an actual assault had been committed upon one claiming to be a member of your body by persons who were not clothed with legal authority; that a senator, concerning whose eligibility and right to perform his duties there were no questions, while attempting to enter the joint session was rudely jerked aside by a pretended officer; that constant threats and repeated attempts to intimidate your members were being made; that the police and sheriff's posse, although besought and advised to keep the peace, had failed to take necessary steps to do so; that an attempt was about to be made by armed and desperate men to seize the Capitol, and with newspapers, irrespective of party, for several days before, insisting that the persons and lives of members of the General Assembly were at the mercy of dangerous and irresponsible men, I say with all these things appearing, I could not have acted otherwise without being false to duty and false to my oath of office. My action did not "disturb or embarrass the members of the General Assembly, in the great and important business of legislation." On the contrary, it prevented them from being disturbed or embarrassed. No member has been arrested, menaced or disturbed, but my action has prevented members from being "menaced or disturbed."

Section 1982 has no reference to section 1981, the two sections being of entirely different import. The latter section has reference entirely to the conduct of members guilty of contempt or breach of privilege, and is intended to inflict punishment upon such persons. But even in this state of case, it is expressly provided that such action shall be FIRST inquired into by a special committee before which the accused may be heard by himself and counsel, and after this trial the committee shall report for the final action of the House, thus showing that a full and fair trial is a condition pre-

cedent to the infliction of punishment. I repeat, that neither of these sections has any bearing on the official conduct of an officer of one of the co-ordinate branches of government. There has been no invasion of one department by another, except your invasion of mine by arraigning me without jurisdiction, and that, too, after you have already found me guilty.

By Sen. Bronston: "May I interrupt you for a moment?"

Gov. Bradley: "Certainly."

By Sen. Bronston: "Do you think that if the Senate were in session and you were to enter it and make a breach of the peace, we would have no right to punish it by fine and imprisonment?"

Gov. Bradley: "I would certainly have no right as an individual to do such a thing, but if in discharge of my duty as Governor, to keep the peace, I enter this chamber or others enter it under my order, even if in the wrong, the punishment must be inflicted upon me as an officer of the Government who has transcended his power, and not as an individual who has transgressed the statute.

But even if the Senate had the right to punish me under the statute cited, it had no right to adopt a resolution in advance, passing upon the question of guilt, and then after a partisan committee had been appointed, it had no legal authority to hear the evidence of three witnesses affecting my action in my absence and before I was summoned. You know that you did this and did it deliberately. There is no court in any civilized country, however exalted, that can convict the humblest citizen without a hearing. And yet the Senate of Kentucky did this, and after having done so, with rare generosity, the committee cited me to a hearing."

By Sen. Bronston: We were not investigating your case alone."

Gov. Bradley: "But you were investigating my case at the same time, and as to the others beside myself, they are described in your resolution as unknown persons. So you were investigating in the absence of all the persons charged. The three witnesses you had before you and heard, testified in regard to the mayor and his police, the sheriff and his posse, two of the most material matters involved from your standpoint. Not only so, you notified me to appear before you at five o'clock, p. m., and that notice was not served until thirty-five minutes after four."

"I have come, not because I recognize your authority, but as an official who courts investigation, having no fear of the result. The resolution, under which you now act, reads as follows: 'Whereas, it is provided in chapter 29, article 1, section 1981 of the Kentucky

Statutes, that the members of the General Assembly shall be in no way disturbed or embarrassed in the great and important business of legislation; they shall not, directly or indirectly, by any ways or means, be arrested, menaced, or otherwise disturbed during the existence of the constitutional privilege; and, further, by section 1982, either House of the General Assembly shall have power to punish any one by a fine of $500 and imprisonment not exceeding six months, or either or both, for a contempt or breach of privilege; and, whereas, IT IS A FACT that W. O. Bradley, GOVERNOR of Kentucky, and others whose names are unknown, have assumed by overt acts heretofore committed, and now being done by him and under his authority, WITHOUT WARRANT OF LAW, NECESSITY OR JUSTIFICATION IN POINT OF FACT, by placing in, around and about this Capitol building, and this Senate Chamber, during the session of this body, an armed military force, under his own personal command, ignoring the civil authorities, and ignoring and attempting to exercise the powers belonging to, and to menace and intimidate a co-ordinate branch of the Government; against all of which this body has protested, and does now solemnly protest and declare to be an infringement of a law, a disturbance and menace to this body, and to the individual members thereof, and in the progress of the great and important business of legislation,' etc.

"The resolution recites that it is 'a fact' that Governor Bradley has done all these terrible things, "without warrant of law, necessity or justification." You do not say that, whereas, armed bodies of men have invaded the capitol grounds and buildings, claiming to act under authority of the Governor of Kentucky, and that therefore, a committee be appointed to investigate, and make report, and call upon the Governor for his reason and authority to do these things, but without giving me the slightest opportunity for hearing, you condemn me in advance, and after you have done this, you cite me to come before this committee.

"Following the preamble, the Senate resolution proceeds: Therefore, be it resolved by the Senate of Kentucky that William Goebel, A. J. Gross, C. J. Bronston, C. C. McChord, Fenton Sims and G. S. Fulton" (all of whom are Democrats) "as State Senators, be, and they are hereby appointed a special committee to forthwith and without delay inquire into such contempt and breach of privileges."

Pray, why inquire, when the resolution recites it to be a fact that these actions were without warrant of law, necessity or justification? What is there to be inquired about? Not content with this,

a motion was made to reconsider the vote by which the resolution was passed, and that motion was laid upon the table, thus putting the passage of the resolution beyond recall."

Mr. Cromwell, the Senate clerk, here being called upon by Senator Bronston, stated, that the record did not show that a motion to reconsider was entered.

Governor Bradley continued: "I don't know what your record shows, neither do I care, I only know that such proceeding was in fact had, if human testimony can be relied on. When I asked the privilege this afternoon of going before the Senate and being heard, you denied me that privilege, stating as a reason that a motion to reconsider the resolution had been laid upon the table and it could not be again considered."

By Senator Goebel: "That is a question for the Senate itself to decide as to whether you should be heard. This committee can not speak for it in that regard."

Governor Bradley not noticing the remark: "In other words, gentlemen, the Senate has been guilty of everything that it has charged me with being guilty of. It has invaded another department of the Government without warrant of law, necessity or justification."

"Notwithstanding all this, I have come before you and submitted the proof which warrants my action. If indeed I am guilty of an infringement of law, I will submit to trial by the proper tribunal but not to judgment in a star chamber proceeding the opinion of whose members has been expressed in advance of a trial, a body possessed of none of the functions of a court and without shadow of jurisdiction.

"This right I claim not as Governor of the great Commonwealth of Kentucky. To the winds with such a privilege. I am a citizen and a freeman, and no power save that pointed out by the Constitution and laws can deprive me of my rights. I am not speaking for applause and beg the audience to desist. I am solemnly speaking as a citizen whose rights have been outraged. I remonstrate against this monstrous assumption of power, and demand a hearing before the Senate. Pardon me, for in the heat of debate, I forgot that I had already been convicted.

"I have acted in the matter with the purest motives. The election of a United States Senator by my party, both you and I knew to be impossible when the State Guard was called out. To those who consulted with me before this action was taken, I said it is unnecessary to talk or think of the election of a Senator. The only thing I

want to know is, has any member of either House been threatened or intimidated, is any one of them in danger of loss of limb or great bodily harm, have the local authorities been unable or unwilling to afford protection. These were the only matters that I investigated, and after this was done, although satisfied that blood would stain the floors of the Capitol, I hesitated, until assured by Col. Gaither that an attempt would be made by armed men to seize the Capitol. To have failed to act then would have been worse than criminal, and even you gentlemen who assume to try me after I have been convicted, would have held me in just scorn and contempt. The people of the State would have denounced me as a coward. Physical courage counts but little in the scale of moral worth for it is possessed by the lower animals and crawling reptiles; but that moral courage which is exercised in the name of principle and humanity, that moral courage which inspires the performance of conscientious duty, shall never be found wanting in me when the lives, liberty and property of the citizens of this State are in danger.

"I am here without any authority upon your part to force attendance. If the Senate of Kentucky thinks, in its wisdom and power, that it has the power to act, let it so decide. I am not attempting to menace or intimidate that body, neither will I be intimidated by it."

Senator Gross: "You may kill us, Governor, but you can not alarm us, for we are Kentuckians."

Governor Bradley: "We are all Kentuckians. The same blood flows in my veins that courses through yours, and when you say you do not fear, you but voice the sentiments of all Kentuckians, for no Kentuckian is a coward.

"I am not here to apologize for my official action. Do what your oaths and consciences tell you to do. If you think you can make me your victim, attempt the sacrifice, for even should you succeed, I might well be congratulated for having been sacrificed in such a noble cause—the cause of peace, law, justice and the public good.

"I repeat I am not here to apologize. I acted upon the testimony adduced, and while the testimony on your side is in some respects different, yet I am fully sustained.

"As God is my judge, I declare that if you, sir, had been president of the Senate (pointing to Mr. Goebel), and you, sir, had been speaker of the House (indicating Mr. Bronston), and had filed the same affidavits before me, I would have acted in the same way, without hesitating for a moment to question your politics."

By Mr. Bronston: "Do you think that would have been a fair trial?"

Governor Bradley: "My action did not purport to be a trial. When informed by affidavits of credible persons that bloodshed and death are impending, what would you think of a peace officer who would require a trial before issuing a warrant to protect human life?"

Mr. Bronston: "That communication of the Lieutenant-Governor was sent on the 11th. Could you not have called the attention of the Senate to the fact, and have asked that the Senate take notice of the matters complained of, and have given us the opportunity to do something before condemning us?"

Governor Bradley: "I did not condemn the Senate. It was not charged that the Senate was about to commit a crime. The State Guard was called out to prevent lawless men from committing crime. I did not take personal but official direction as the Chief Peace Officer of the Commonwealth. If I had the right to call them out and place them under the control of others, I had the right to control them myself, especially when assured that the local authorities would not perform their duty. The affidavits of the presiding officers as I remember were not made until the 14th, only the day before the troops were called out."

By Senator Bronston: "You did condemn the Senate by sending the troops here."

Governor Bradley: "If any Senator anticipated joining his efforts with those of outsiders in an attempt to break the peace—which I do not say was the case—then that Senator may have been impliedly condemned, if prevention is synonymous with condemnation. But my action was not intended to condemn the body, and can not be so construed.

"The statute says that the Senate shall in no wise be disturbed or menaced while engaged in the great and important business of legislation, and I was attempting in good faith to prevent any such menacing or disturbance.

"I did not act hastily in this matter. It was not my wish to see the name of the Commonwealth stained by a necessity which demanded such action. I begged the local authorities to preserve the peace, and advised them fully what their duties were. I talked freely with the presiding officers of each House and took their affidavits, and was assured by them that no effort was being made by the local authorities to preserve the peace, and even after all this,

did not act until informed that it was the purpose of this lawless element to take forcible possession of the Capitol. Put the shoe on the other foot. Suppose the political status had been reversed, and two Democratic presiding officers had come before me with the same complaints, and I had been notified that a number of Republicans were going to take possession of the Capitol, and that acting under these circumstances, I had called out the State Guard, I am frank to say, that this committee instead of condemning would have heartily endorsed my action. A change in the position of affairs does not change the propriety of my action, however much it may cause ill will on the part of those who feel themselves aggrieved.

"I acted on the best lights before me, conscientiously for the purpose of preventing open-handed violence and bloodshed which would have disgraced the Commonwealth.

"And now, gentlemen, I submit the matter to you. Do what you may think is right, but remember always that you act at your peril."

By Senator Bronston: "You charge the Senate of being guilty of contempt to you?"

Governor Bradley: "No, sir; I could not say that the Senate could be capable of contempt to any one. I stated that the Senate had charged me with invading the legislative department because I undertook to protect it, but that while I was innocent of the charge, the Senate itself was guilty of invading my department."

By Senator Bronston: "And that you were guilty of the same thing that we were charging you with."

Governor Bradley: "I said no such thing, and you know it."

By Senator Bronston: "Just this question dispassionately."

Governor Bradley: "Certainly. I know of no man who has lost his temper save you."

By Senator Bronston: "The question is this; do you deny the right of the Senate as a body to protect itself at all. You seem to do that."

Governor Bradley: "Certainly I do not. The Governor may be impeached if guilty of official misconduct in interfering with legislation, and punished as any other citizen for personal misconduct or crime."

By Senator Bronston: "You do not deny the right of the Senate to impose a fine on you just as on any other person, do you?"

By the Governor: "If the statute is to be construed as applying to persons not connected with the Senate as officers and members in-

dividually, certainly not. But you have no right to fine any one without giving him a trial."

By Senator Bronston: "We gave you an opportunity."

Governor Bradley: "Yes, you very liberally summoned me before you after I had been convicted."

Senator Bronston: "That conviction was in the nature of a protest against the use of the military force."

Governor Bradley: "No, sir, that is not a fact. But if it is, why should I be summoned to answer? I presume the object is to allow me to show cause why I should not have been, instead of showing cause why I should not be, convicted."

Senator Bronston: "Have you not by your military force taken possession of these Capitol grounds?"

Governor Bradley: "Yes, but that is not what the resolution charges me with being guilty of. You charge it to be a fact that I did this without warrant of law, necessity or justification."

By Senator Bronston: "Have we not the right to declare that this is in violation of the law?"

Governor Bradley: "Certainly, you have the physical right to declare anything, but you have no power to convict without a hearing. You had a right to appoint a committee to investigate the matter, but no right to condemn, in any event, until after the coming in of the report."

By Senator Bronston: "Was it necessary to investigate when the soldiers had been actually present in this chamber?"

Governor Bradley: "Certainly, you had no right to adjudge me guilty of wrong until you inquired into my reasons for taking such action—in other words, until you had afforded a hearing."

By Senator Bronston: "Had you not furnished the public a statement?"

Governor Bradley: "Yes, sir; and if you had taken the statement into consideration, it afforded an ample explanation and justification."

By Senator Bronston: "Was it not in our power to investigate that? I will say that we had not half as much in the resolutions as I wanted."

Governor Bradley: "Doubtless that is true. It is difficult to satisfy you. You could have cited in the resolution that soldiers had taken possession of the Capitol grounds, and have authorized a committee to investigate by whose authority it was done, and the reasons therefor; but instead of that, you decide in the resolution, and

so state, that I have done these things 'without warrant of law, necessity or justification,' and then you summon me here to answer. And not content with this conviction, you add that I have done this in order ' to menace and intimidate a co-ordinate branch of the Government in the progress of the great and important business of legislation."

"Now I ask what great and important legislation was pending before this body?"

By Senator Sims: "The revenue bill was pending to-day."

Governor Bradley: "Yes, and it will be pending when you adjourn, notwithstanding the House passed it several days ago, and you have had ample time to have passed it had you desired. You not only charge me with being guilty of all the things mentioned, but you add that the Committee is 'forthwith and without delay'—not only 'forthwith,' but to give greater emphasis if possible, 'without delay,' to inquire into such contempt and breach of privilege. Now after all this, I inquire, why was I summoned here?"

Senator Bronston: "We are going to pass on the question of fine."

Governor Bradley: "Ah, indeed; you first convict a man of murder without notice, and then you notify him to come and be heard as to whether you shall send him to the penitentiary for life or hang him. The fixing of a fine is immaterial, it is the conviction of an offense without a hearing that I object to."

By Mr. Bronston: "Just as if a man had entered this chamber armed, and we would recite the fact that he had done it."

Governor Bradley: "But how will you convict the officer by whose order he entered until you give him a right to be heard? Gentlemen, gentlemen, you know better. You are good lawyers, and know the course of the Senate can not be justified."

By Mr. Sims: "In an indictment you have to state the facts."

Governor Bradley: "Yes, but a sworn grand jury investigates the evidence before doing this, and even then the indictment only charges the offense. The court does not pass judgment until a hearing is given.

"In conclusion, allow me to say, that throughout this whole affair I have been actuated alone by just and commendable motives to preserve the peace and order of the Commonwealth. It may be that during this investigation I have at times lost that dignified self control which should be at all times exercised by one holding the place of Chief Magistrate of a great Commonwealth. If this be true, I regret and apologize for it, but I will never apologize for the conscientious performance of a manifest duty."

PROCLAMATION.

EXECUTIVE DEPARTMENT,

Whereas, the last General Assembly of the Commonwealth of Kentucky failed to enact laws necessary to the greater safety and protection of life and property against mob violence;

Whereas, said body likewise failed to provide for the payment of the floating debt, necessary expenditures of government and appropriations; the curtailing of expenses, the economical administration of public affairs, and the passage of much other needed legislation, by reason of all which, expenses are not diminished, the revenue of the State wasted, its credit impaired, and human life and property denied proper protection.

Therefore, I regard this as an extraordinary occasion, and by virtue of the authority conferred upon me, as Governor of said Commonwealth, hereby convene the General Assembly aforesaid at Frankfort, the seat of Government, where it will meet on the 13th day of March, 1897, to continue in session for as much as sixty days.

The subjects to be considered by said body are as follows:

1. The prevention of mob violence, the punishment of those engaged in same, and the protection of life, limb and property.

2. The curtailing of salaries, fees, expenses and costs in each and every branch of the public service; insuring of speedy trials and verdicts, and preventing the burdening of Appellate and Circuit Court dockets.

3. Amending the criminal law concerning grand larceny, embezzlement, and obtaining money under false pretenses.

4. Allowing the State Inspector and Examiner to employ a stenographer and providing compensation for same.

5. Providing for the payment of the floating debt, current expenses and necessary appropriations, made and to be made, for the State.

6. Abandoning the penitentiary at Eddyville and providing necessary workshops, cells, machinery, etc., at Frankfort penitentiary; or, if this be deemed not proper, providing the necessary workshops, machinery, etc., at each of said penitentiaries.

7. The adoption of such legislation as may be necessary to provide for the building or purchase of a House, or Houses of Reform,

amending or changing the law in regard thereto, and providing for the confinement of persons, mentioned in the act creating such houses, in any place other than the penitentiary.

8. Thoroughly amending, changing and revising the election laws.

9. Providing that all elections for school trustees shall be held by secret ballot.

10. Apportioning the State into Appellate and Circuit Court, Senatorial and Legislative Districts, as provided by the Constitution.

11. To create any necessary additional Circuit Court Districts, and change the time of holding any Circuit Court.

12. Authorizing the revision, alteration, amendment, and codification of the Statute Laws of the State.

13. Legalizing the discounting of asylum warrants, and providing for the necessary improvement of asylums, and sewage for same.

14. Preventing convicts from testifying; or regulating the manner of same.

15. Relieving litigants, who have actions pending, or, that may be pending in the Court of Appeals for the period of two years.

16. Enlarging the powers and duties of the Board of Pharmacy.

17. Compelling State banks, trust companies, private banks, building and loan associations and other like corporations to make quarterly reports, and providing for the appointment of an inspector and examiner for same, whose salary is to be paid by said institutions.

18. Amending statute governing cities of the second class, as to methods of assessment for street and sewage purposes, and as to public libraries therein.

19. Providing severe punishment of all persons who interrupt public meetings or speakers, or deny or abridge the right of free speech.

20. Protecting trees and plants from the ravages of the San Jose scale.

21. Amending the laws regarding trust companies.

22. Making the law regarding the operation of mines and stone quarries applicable to owners of gas and oil wells.

23. Amending the act of August 6, 1892, as to issual of bonds by counties to fund indebtedness and the payment of same.

24. Empowering Sinking Fund Commissioners to reinvest the $165,000 belonging to the State Agricultural and Mechanical Col-

lege; or issue bonds for same, and making good any loss sustained by that institution.

25. Protecting coal miners concerning the shipment of convict coal into this State.

26. Providing for the submission to voters of the State, taking vote thereon and certifying the amendment now proposed, and those hereafter proposed, to the State Constitution.

27. Fixing the boundaries of cities and towns of this State situated contiguously to other States.

28. Amending statute governing cities of the fourth class.

29. Amending the law relating to "Official Indexers."

30. Amending and altering the law concerning public printing and stationery.

31. Amending Revenue and Taxation Laws, concerning the duties of sheriffs to exhaust all remedies to collect taxes before selling land, facilitating the collection of delinquent taxes, changing the time of making reports to the Auditor for use of Board of Valuation and Assessment, and changing the time of rendering reports to said board by corporations.

32. The passage of laws more clearly defining and carrying into effect the provisions of sections 205, 244, and 246 of the Constitution.

33. Changing the time of making reports of insurance companies.

34. Modifying and amending the laws for the government of towns of the sixth class and other towns.

35. Amending Section 22, Article 3, Chapter 100, Public Acts, 1891-2-3.

36. Amending Section 15, Article 2, Chapter 48, Public Acts, 1894; also amending an act entitled "An Act to amend Section 14 of Chapter 53, General Statutes," approved January 16, 1882; also amending Section 9, Chapter 243, Public Acts of 1891-2-3.

37. Amending the law concerning the inspection and weighing of grain, and regulation of elevators, warehouses and granaries, in which grain is stored.

38. Regulating the jurisdiction of Appellate, Circuit, County, and Quarterly Courts.

39. Amending an act entitled "An Act to amend an act, entitled 'An Act providing for the creation and regulation of private corporations,'" in so far as same amends Section 34 of same, Chapter 43, Public Acts of 1891-2"; also amending Section 11, Article 3, Chapter 103, Public Acts, 1891-2-3.

40. Establishing and regulating fees collectible by Secretary and Assistant Secretary of State, and manner and time of payment into Treasury.

41. The passage of an act allowing cities and towns to buy property for taxes, and hold same subject to redemption as to real estate.

42. Electing a United States Senator to fill the vacancy in said office upon the expiration of the temporary appointment of Hon. A. T. Wood.

Done at the Capitol in Frankfort, Kentucky, on this the 5th day of March, 1897, and in the 105th year of the Commonwealth.

WILLIAM O. BRADLEY,
Governor of Kentucky.

PROCLAMATION.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,

The 11th section of the proclamation issued on the 5th of March, 1897, calling the Legislature to meet on the 13th day of March, is amended as follows:

"And to provide for an additional Circuit Judge or Judges in districts having more than one Circuit Judge."

Given under my hand March 12, 1897, and 105th year of the Commonwealth.

WILLIAM O. BRADLEY,
Governor of Kentucky.

MESSAGE TO THE GENERAL ASSEMBLY OF KENTUCKY.

Called Session, March 13, 1897.

Gentlemen of the Senate and House of Representatives:

When the present administration came into power, it was confronted with a large floating debt and an insufficient revenue to pay current expenses.

Your attention was called to this, and relief requested at the last session. You were asked to enact laws to abolish unnecessary offices, reduce salaries, curtail expenses, provide necessary revenue, prevent mob violence, but each of these recommendations passed unheeded, the result of which is, that the financial credit of the State has suffered seriously, expenses have increased and mob rule has prevailed to an extent never heretofore known in this Commonwealth.

MOB VIOLENCE.

Since your adjournment, a number of citizens of the State have been atrociously murdered by cowardly mobs. In some instances, although guarantees of protection had been given, they proved mere ropes of sand, and although courts were in session, and in one instance the defendant on trial, the sanctity of the law was ruthlessly invaded, decency and order outraged and murder committed under pretense of purifying society and punishing crime. No apology or excuse can be made for such conduct. Those who congregate and conspire to and take human life are legally, greater criminals than those whose lives they seek or take, for no crime is so base and repulsive as that committed under cloak of pretended vindication of law. Such action does not deter criminals or prevent crime. Its effects are direful upon the community and brings the administration of justice into contempt.

The condemned criminal suffers fearful and indescribable punishment and torture as he confronts certain approaching death and notes the silent passage of the hours that bring him nearer to eternity. Society is impressed with his harrowing position, and thus a legal condemnation and the execution that follows, inspire horror in the mind of the doomed man and fear in that of the would-be

murderer. The action of a mob, on the other hand, begets a spirit of lawlessness and disregard for human rights and is the work of only a few moments, leaving in its wake an indelible stain on the locality where it occurs, dealing out punishment, the swiftness of which, compares to that inflicted by the law, is actual relief.

No mercy should be shown the rapist, black or white, but the extreme penalty of the law promptly inflicted. Such a course will effect more good, a thousand fold, than the action of the mob.

Not only has human life been lawlessly taken, but rights of property have been disregarded, and midnight raiders in the counties of Franklin, Woodford, Lewis, Madison, Anderson, Fleming, Lincoln, Mercer, Washington, and probably others, have, with impunity intimidated citizens, closed and destroyed toll-gates and houses, and openly defied the law.

The civil authorities have failed up to this time, so far as I know, to convict, and have almost universally failed to arrest, any of the murderers and raiders who have thus disgraced the Commonweaith. This is a sad commentary on our civilization. The power of the Executive to bring these outlaws to justice is narrow and circumscribed. His only authority, unless he should witness such conduct, accompanied by a failure to protect the citizens by local authority, is to assist county officers in discharging their duty, which, in most instances, they have manifested no disposition to perform. He can not even offer a reward, for the statute gives authority to take this step only in aggravated cases of murder and other felonies against the person. In 1873 a statute was enacted, known as the Kuklux Law, in which authority was given to offer a reward for the apprehension of those guilty of such crimes as have been committed by these turnpike raiders. But in 1893, when the Legislature enacted the new chapter on Crimes and Punishments, the provision as to rewards among others, was omitted, and the Court of Appeals, some years ago, decided that all portions of the law omitted were repealed. The Executive has, at all times, been ready and willing to the fullest extent, to uphold and assist those whose duty it was to apprehend these criminals, of which disposition they were notified.

Your attention is further directed to the fact, that the Governor has no right to make any draft upon the Treasury for the purpose of detecting criminals in a quiet and secret manner, which is, of all others, the most effective.

At your last session you were earnestly asked, in my first official

communication, to take steps to prevent and punish mob violence. Thereafter, another message was sent to you, recommending the enactment of a law making the counties in which such outrages were committed responsible in damages to the legal or personal representatives of the victim, and giving change of venue to other counties, in order that fair trials might be had. The same measures are now recommended, together with such provisions as will make counties liable in cases of personal injury where death does not ensue. Whenever the people of a county know that they will suffer financially by reason of such conduct, it will prove an active incentive to prevent the commission of such crimes.

If sheriffs, jailers, and other peace officers having prisoners in their custody, or whose duty it is to take them into custody, would do their duty, much of this trouble might be avoided. In order that they may hereafter be more watchful and faithful, it is recommended that in each case, when a prisoner is taken from their custody or is taken by reason of their failure to arrest and protect him, that the officer in charge, or who, knowing of the crime, and having reasonable opportunity to take charge of the party fails to do so, shall forfeit his office.

It is further recommended, that in cases where prisoners in confinement may be armed, without thereby enabling them to escape, that the officer having them in custody shall have the right to arm them in order that they may resist such attacks. No mob would be able to stand before the prisoner fighting for his life and the jailer or sheriff fighting for his office.

STATE INDEBTEDNESS.

The manner in which claims against the State have been hawked about and discounted, their holders fleeced and shaved, is discreditable. Following, is given a statement of the present condition of affairs, and you are most earnestly requested to enact such measures as will liquidate the floating debt and promptly pay current expenses, so that the credit of the State, and those to whom the State may become indebted, will not suffer in the future.

It has for some years been obvious that the rate of taxation was insufficient. To reduce it was a step in the right direction, provided expenses had been reduced also; but reduced taxation and increased expenses have brought about the never-failing result.

It is apparent that the rate must be increased, and as to how

long this increase is to continue, depends entirely upon steps that may be taken in the direction of economy and reduction of expenditures.

It is suggested, that the passage of a well-regulated law increasing the license fees of wholesale and retail liquor dealers, druggists and distillers, would produce considerable revenue. The same may be said of increased license fees on pool and billiard tables and other similar devices and of special taxes for the sale of tobacco, cigars, etc.

The license fees for circuses and other entertainments might well be increased and regulated according to the population of the various counties in which they exhibit. License fees might be required of all persons selling pistol cartridges and all newspapers and others offering to give firearms as premiums.

A fee of two dollars might be charged for each commission issued to an officer. The tax on deeds and mortgages should be regulated according to the value of the property mortgaged or conveyed, not less than twenty-five cents and not more than two dollars. There is no reason why a mortgage or deed for $100 worth of property should be taxed as much as one for $1,000 worth of property.

It is believed that a carefully constructed bill, along the lines indicated, would produce considerable revenue.

The bonded indebtedness of the State is composed of the following items:

Certificates of indebtedness issued June 1, 1885, due June 1, 1905, bearing 4 per cent. interest per annum, payable semi-annually	$500,000 00
Matured Military Bonds belonging to A. & M. College	165,000 00
Old Railroad Scrip long past due	394 00
Old 30-year issue (1835), past due more than thirty years	5,000 00
Old issue made from 1841 to April, 1846, long past due	1,000 00
Educational bonds, bearing 6 per cent. interest, payable semi-annually out of the Sinking Fund	$2,312,596 86
Total	$2,983,990 86

Hitherto, the educational bonds have not been enumerated as a part of the indebtedness of the State on the ground that they are not redeemable. The fact that they constitute a continuing debt

upon which interest is paid and represent that much money due the educational department, which the State borrowed and expended, does not, in my judgment, authorize their omission from the column of indebtedness.

The old bonds mentioned, amounting in the aggregate to $6,394, have been past due for many years, and most probably will never have to be liquidated, yet they are in fact, due and owing and should be counted.

The resources of the Sinking Fund are:

Balance of Sinking Fund	$386,890 58
406 shares of stock in Bank of Louisville, valued at	26,390 00
Turnpike stock, valued at	400,000 00
Total	$813,280 58

In my judgment, the bank stock would not bring the sum named in open market now, and would not have brought, at any time for several years last past, the valuation fixed. As to the turnpike stock, the agitation for free roads and the shameful conduct of those who have taken the law into their own hands, have caused serious depreciation.

But, assuming the valuation above to be correct, and substracting the resources named from the bonded indebtedness, we have a balance of that debt amounting to $2,170,739.98.

To this must be added the floating debt, past due, as follows:

Outstanding warrants	$1,142,503 72
Estimated unaudited claims	5,000 00
Unpaid appropriations (1894) for asylum buildings	61,071 55
Unpaid appropriation, Houses of Reform	100,000 00
Due school teachers, July 1, 1897	165,000 00
Due asylums, April 1, 1897	120,000 00
Deficit general expenditure fund	319,230 42
Deficit school fund	1,423 11
Total	$1,914,228 80
Add balance, bonded indebtedness above	2,170,739 98
Grand total	$4,084,968 78

Of the old warrants issued before the present administration came into power, $114,422.35 have been paid, and on new warrants issued on old indebtedness there has been paid about $100,000.

Under the administration of the late Superintendent of Public Instruction the $44,060 to the credit of the school fund was exhausted, and at the end of the fiscal year, July 1, 1896, after the application of all taxes collected, there was a deficit of $114,612.

The amount due teachers on the first of January last was $165,000. This amount, the Superintendent assures me, will be paid by the end of the present fiscal year (July 1st); so that the revenues of the year 1896 will liquidate the current school indebtedness for that period, together with the deficit named. By reason of the payment of that deficit, and an increase in the common school enrollment of 8,337 the per capita of $2.80 has been reduced to $2.20.

REPORT OF CORPORATIONS, ETC.

The present law requires that reports should be made by each distiller in the State to the Board of Valuation and Assessment, as of September 15 of each year, of the amount of whisky on hand on that date for the purpose of assessment. It likewise requires the report of withdrawals of whisky from the bonded warehouses to be made on the 1st day of January, May and September. The auditor informs me that it is impossible to make an exact check on the distillers, because the reports being rendered at different times, there is always necessarily a discrepancy between them. At his instance, it is recommended that the date of these reports be changed to the last day of August in each year.

The present law also requires all corporations to report as to the 15th day of September in each year to the Board of Valuation and Assessment. These reports should be made as of the 31st day of December, or the 30th of June of each year, as it is practically impossible for large corporations to close their accounts and render a correct and accurate statement in the middle of any month, and as most corporations close their books at the end of the calendar or fiscal year.

The present law requires insurance companies to make their reports to the Commissioner of Insurance for the purpose of taxation on the 30th day of June. All the large insurance companies make a public annual report as of the 31st day of December in each year, and, as it would be very beneficial to have a comparison of

the reports made to the auditor's office with their published reports, it is suggested that they be hereafter required to report as of the 31st of December instead of the 30th of June.

These changes, if made now, so as to become effective at an early date, will result in the collection of an increased amount of revenue.

DELINQUENT TAXES.

Under the present law a large amount of land is sold to the State for delinquent taxes. Under the decisions of the courts these sales are null and void if all the steps required by law for the collection of taxes by the sheriff, and the assessment of taxes by the assessor, have not been strictly complied with. It is suggested, that a law should be passed compelling the sheriff, before he can receive credit from the auditor for his land sales, to produce evidence that all the necessary steps have been taken to make the sale a legal one, and thereby insure greater care on the part of sheriffs, and greater security to the State in the purchase of these lands for delinquent taxes.

There is no sufficient provision in the statutes for the collection of delinquent taxes on personal property. In the large cities especially, an enormous number of lists of delinquent personal taxes are allowed by the fiscal courts and credited to the sheriff each year. After the sheriff has received credit for them he has no incentive to further attempt to collect them, as the 4 per cent. is too small to recompense him for the trouble of levying and making the proper search for property on which to levy for this class of taxes. A law should be passed authorizing some person, other than the sheriff, to collect these taxes, and either provide for the payment of said person, out of the amount collected, or add to the amount of taxes so delinquent an amount sufficient to pay for trouble in collecting same.

There should be no delay in correcting these evils, and great good, in my judgment, will accrue to the State if prompt action is had.

CRIMINAL PROSECUTIONS.

There is no branch of the public service which is so onerous to the tax-payer as criminal prosecutions. For years, up to the last (of which no report has yet been made) these expenses have steadily increased. For the second time, I most respectfully recommend the reforms included in a former message.

1st. The passage of a law giving power to the judge, instead of

the jury, to fix the punishment, leaving with the jury the sole right to pass upon the guilt or innocence of the accused. It is frequently not difficult to obtain a verdict of guilty, while it is next to impossible to procure an agreement as to the extent of punishment. Hung juries are a most prolific source of expense, as well as escape for criminals. In many of the States of the Union, and in the Federal courts, the rule recommended has proven of the greatest value. From consultations had with a number of circuit judges of the State, I have been assured that this change would greatly facilitate the administration of justice, and save the State more than $100,000 annually.

2d. All misdemeanors, where the maximum fine is less than $500, or the maximum imprisonment less than one year, or both, should be removed from the circuit courts, and jurisdiction to try the same conferred upon justices of the peace, police and quarterly judges, as may be deemed proper. In this way, the circuit courts would be enabled to clear their dockets and prevent large expense in the way of jury fees and witness fees (resulting from delaying trials of felony cases) while witnesses are in attendance awaiting the completion of trials in misdemeanor cases.

3d. There should be some sort of limitation placed upon the indiscriminate summoning of witnesses, and the procuring of warrants and arrests for grand larceny, where the accused is guilty of petit larceny only.

The enactment of a law requiring that affidavit should be made by some reputable party as to the necessary witnesses, and clearly showing the crime charged to be grand larceny, would, in a large degree, cure this trouble.

4th. The payment of fees to officers for holding examining courts should be abolished, or not more than $2.00 for each eight hours consumed allowed. It should be made the duty of county attorneys under penalty, to give these claims their careful attention, and certify their correctness under oath.

5th. The minimum value of all property stolen, or obtained under false pretenses, or embezzled, to constitute a penitentiary offense, should be placed at $20.00. There is no reason for a distinction in these matters. Under this rule the number of convicts in the penitentiary would be materially lessened, and a large sum saved by the State. Persons guilty of stealing, embezzling, or obtaining by false pretense, any money or property of less value than $20.00 should be punished by being compelled to work the roads and streets of the

county, city or town instead of being imprisoned at the expense of the State.

A. & M. COLLEGE BONDS.

You are doubtless aware that Congress, in July, 1862, donated land to the several States for the purpose of endowing Agricultural Colleges. Under that Act, Kentucky received 330,000 acres.

The act provided that all the money derived from sales should be invested in securities of the United States, or of the State or some other safe investment, yielding not less than 5 per cent. upon par value of said securities, and the money so invested should constitute a perpetual fund, the capital of which should remain forever undiminished and the interest inviolably appropriated by each State claiming the benefit of the act for the support and maintenance of at least one college.

It is further provided by the act that if any portion of the fund invested shall by any action or contingency be lost or diminished, it shall be replaced by the State, so that the capital shall remain forever undiminished, and the annual interest regularly applied, without diminution, for the purpose stated. Kentucky accepted the provisions of this act, established the college by act of February 22, 1865, and authorized the commissioners of the sinking fund to sell the land and scrip and invest the proceeds as required by act of Congress. The commissioners sold the scrip and invested the proceeds in Kentucky 6 per cent. bonds known as military bonds, the interest on which was regularly paid until July 1, 1894, at which time some of the bonds matured, and the remaining bonds maturing a short time thereafter, the interest ceased to be paid. Not only the principal, but the interest amounting to about $18,000, is now due. The failure to pay this interest has severely crippled the institution, and steps should be taken immediately so that the necessary funds may be had to enable the college to open successfully in September next.

It is thought that the most feasible plan would be to authorize the issual of bonds to take the place of the old military bonds, bearing interest at 5 per cent., as of date of the maturity of the old bonds, thus insuring the payment of all interest due and to become due, in accordance with section 50 of the Constitution. However, this is a matter which is submitted to you for solution in the way you think most practicable and proper.

SALARIES.

Again, attention is called to the matter of salaries. There is no reason why present salaries should be greater than those allowed at the conclusion of the war, when gold was bringing an enormous premium; yet they are now greatly more, in some instances, nearly twice as much. Next November some of these officials are to be elected, and as their salaries can not be reduced during their term of office, to be of any value legislation should be now had, as there will be no other session until after the new term of office begins. And while engaged on this subject a general reduction should be made.

ELECTIONS.

Republican government demands, as its surest support and most powerful protection, purity of the ballot and the adoption and enforcement of such laws as will enable every citizen to know how to vote, to be protected in that right, and have his vote counted. The result of the late election demonstrated, in more than one respect, that changes should be made in the present system.

I have the honor to repeat the recommendations made at the last session.

1st. Where registration is enforced, especially in large cities, it is claimed that regular registered voters, in some instances, are falsely impersonated, and on this account persons who are not entitled, vote, and in this way legal voters are prevented from exercising their privileges. As to whether this charge be true I do not know, but the fact that such a wrong is possible is sufficient to demand the enactment of laws which will, in some measure, identify the lawful voter.

2d. The intention of the ballot system was to enable every citizen to cast his vote in such a way as to secure perfect secrecy. In view of this intention, it appears improper that in registering voters, the officer should have the right to ask and record their party affiliations. This is done upon the theory that in primary elections parties may be enabled to control their organization. In places where no registration is allowed no difficulty is experienced in this matter, and none, I presume, would be experienced elsewhere. The party presenting himself to vote at a primary election might be sworn by the officers, if demanded, and be punished if guilty of false swearing.

3d. Primary elections should not be held at the same time and place as regular elections. They consume time and create undue confusion and excitement. The selection of candidates should not be allowed in any way to conflict with or affect the election of officers.

4th. The placing of the emblem or party device in a square, and requiring the voter to place his cross-mark in the square has led to confusion and uncertainty. The emblem should be placed at the head of each ticket, a square or circle beneath, and entirely disconnected from it, and the cross-mark required to be made therein.

5th. Article 13, chapter 41 of Kentucky Statutes, provides penalties against certain frauds in elections, many of which are dead letters, because section 1594 prohibits conviction upon the testimony of a single witness, unless sustained by strong corroborating circumstances. Surely, such a safeguard as this to the defendant is unnecessary, in view of the fact that he is a competent witness.

6th. The practice of corralling voters, and with money and whisky persuading them to remain away from the polls, is quite common. It is also common to hire men to remain away from the polls.

The law should prevent this, and, in all cases of corralling, authorize the issuance of a writ of habeas corpus on the petition of any person; and on the trial thereof, then and there to be had, require the judge or magistrate to release the persons detained. In addition, laws should be enacted with severe penalties against the person or persons having the voter in such unlawful custody, or causing him to remain away from the polls.

7th. According to the present law, when any party has failed to nominate a candidate by convention or primary election, upon a petition, signed by the requisite number, any individual, however objectionable, may have his name placed under a party device. Frequently this may prove distasteful to the party, and should not be allowed.

8th. Section 1458 prohibits the Secretary of State from certifying and the county clerk from placing the name of a candidate properly certified to have been nominated on the ballot whenever notified by such candidate that he will not accept the nomination. Section 1464 provides, in case of death, removal or resignation, after the printing of the ballot, that certain steps may be taken to meet the contingency. I suggest, that in either state of case referred to in the last-named section, or in the case mentioned in section 1458,

it be made the duty of the Secretary of State or clerk to immediately give notice to the Chairman or Secretary of the State Central, District or County Committee, and that posters be provided and used in such cases, and proper steps taken by the party organization, to enable it to supply the place, as provided in section 1464.

9th. Section 1557 prescribes a fine of $50 and imprisonment in the county jail against any officer upon whom a duty is imposed in chapter 41 who shall willfully neglect to perform it, or who shall willfully perform it in such a way as to hinder the object of the law. A glance at the many important duties which this section governs, will demonstrate that the punishment is entirely inadequate as to officers of registration and officers of regular and primary elections. Particularly, is this true as to the duties assigned to the Secretary of State in certifying nominees; the clerk in the proper preparation and distribution of stencils and ballots; the sheriff in delivering ballot boxes; county judge in the appointment of officers of election and giving notice of same; the admission of unauthorized persons into the booth or within less than fifty feet of the polls; the counting of votes and the preservation of contested ballots. In this connection, I fail to see that any punishment is provided for an officer of the election who willfully and knowingly refuses to receive a legal vote. It is recommended that the law be carefully revised so as to severely punish all violators thereof, and make it sufficiently comprehensive to provide safety and security for the voter, and certainty that his vote will be fairly counted.

10th. Section 1448 limits the appointment of officers of elections to housekeepers. Many competent persons are excluded by this section, and it should be repealed.

In addition to the foregoing suggestions your attention is called to section 1482 of the statutes. That section should be so amended as to allow ballots to be counted, even if not sealed and certified as required, if it should be made to appear by proof positive or circumstantial that they are in fact the ballots concerning which there is a dispute.

The voter should not be deprived of his right of suffrage by reason of the awkwardness or incompetency of election officers.

FREE SPEECH.

Free speech is the inspiration of Republican government. To deny or abridge it is a crime against liberty. It should be encour-

aged and protected by every true American. Laws should be adopted inflicting severe punishment on those who interfere in any way with speakers or public meetings. The interferences preceding the last November election were not creditable and should never be allowed to occur again. This subject should be attended to now, as before another meeting of your body a great campaign will have transpired in Kentucky—a campaign which should be marked by deliberate thought and uninterrupted speech. Principles which will not admit of full and fair discussion should not be entertained, much less given effect. The people may at all times be relied upon to do right when they are given an opportunity to understand the questions at issue.

STATE APPORTIONMENT.

Heretofore your attention has been invited to the matter of apportionment of the various districts of the State. It is now urged by citizens of Louisville that the creation of another circuit district in the county of Jefferson is absolutely necessary. It is represented, too, that unless some steps should be taken by your body to prevent it, a portion of Jefferson county, recently taken into the city of Louisville, will be denied the right to vote by reason of defective apportionment laws.

The framers of the present Constitution determined to secure a just apportionment of the State, and for that purpose adopted suitable provisions. No political party has the right to invade or violate the rights of the people to just equality in the privileges of citizenship. The present General Assembly, being Republican in one branch and Democratic in the other, is well constituted to make a fair apportionment of the State.

Section 116 (Constitution) requires, "The General Assembly shall, before the regular election in 1894, divide the State, by counties, into as many districts, as nearly equal in population and as compact in form as possible, as it may provide shall be the number of the judges of the Court of Appeals."

The apportionment, under this provision, into seven appellate districts, is not in harmony with the section quoted. For instance, in one of these the population is only 180,244, while in another it is 307,835; as little as 4,033 square miles are embraced in one while as much as 7,987 are contained in another. Other similar instances were cited in a former message. A glance at the figures will show that the Constitution was violated in making the apportionment.

Section 128 (Constitution) provides: " At its first session after the adoption of this Constitution the General Assembly, having due regard to the territory, business and population, shall divide the State into a sufficient number of judicial districts to carry into effect the provisions of the Constiution concerning circuit courts. * * * The number of said districts, excluding those in counties having a population of 150,000, shall not exceed one district for each 60,000 of the population of the entire State."

In a former message your attention was directed to a comparison of many of the districts, among which were the second district, with an area of 580 square miles and a population of 32,308, and the twenty-eighth district, which embraces an area of 2,540 square miles, and a population of 73,061.

Section 33 (Constitution) provides: "The first General Assembly after the adoption of this Constitution shall divide the State into thirty-eight Senatorial districts and one hundred representative districts, as nearly equal in population as may be, without dividing any county, excepting where a county may include more than one district, which districts shall constitute the senatorial and representative districts for ten years. Not more than two counties shall be joined together to form a representative district: Provided, in doing so, the principle requiring every district to be as nearly equal in population as may be shall not be violated. * * * If in making said districts inequality of population should be unavoidable, any advantage resulting therefrom shall be given to districts having the largest territory."

From among the many instances cited in a former message, showing that this section has been disregarded, your attention is called to the fact that one legislative district, composed of the four counties of Bell, Harlan, Leslie and Perry, covering an area of 1,628 square miles, and containing a population of 26,804, is given one representative, while the counties of Hancock, Meade and Larue, with an aggregate area of 792 square miles and a population of 28,131, are given three representatives or one each. Further comparison would be odious. That all these apportionments are unconstitutional, inequitable and unjust can not be seriously questioned. It is said, however, that as the first Legislature that assembled after the adoption of the Constitution was directed to make the apportionment, no other body can interfere until after the lapse of ten years as to appellate, senatorial and legislative districts, and that this great wrong can not be

remedied. Clearly, it was not the purpose of the makers of the fundamental law to give the power to that Legislature alone to make the first apportionment. The power to do this act was conferred in order that the question should be settled as early as possible, and proper representation had. Can it be questioned, that if that body had failed to even undertake to act, that the State would have been deprived of a Legislature for the period of ten years? The failure to act and unconstitutional action are one and the same, for in the latter case, action is nugatory and void. The present Legislature having been elected in this way, the purposes and necessity of government require its recognition, otherwise anarchy and confusion would result. Hence, the present body, although improperly selected, per necessitate, has the power to carry into effect the requirement of the fundamental law.

RELIEF FOR LITIGANTS.

There are now nine hundred and seventy-six cases under submission in the Court of Appeals, three hundred of which have been submitted more than a year. In addition, there are five hundred and forty on the present docket not submitted, two hundred of which have been on the argument docket awaiting hearing for more than a year. This is a substantial denial of justice to those having causes pending in that court, for which they are in no wise responsible. As a remedy, it is suggested, in the first place, that the minimum amount necessary to give jurisdiction be increased to $300. There is nothing in the threadbare argument that such a rule would deprive the poor of the right to be heard in the court of last resort, for if there were anything in this contention, the poorer the man and the smaller the amount the greater the necessity for allowing his appeal. Those who are so unfortunate as to have in controversy less than $100 are now denied the right of appeal. It would certainly be no greater hardship to deny the right to those having actions involving less than $300. Of necessity, the jurisdiction of courts must be regulated in proportion to the duties devolving upon them, so that by reason of unnecessary burdens justice may not be delayed. This principle has been recognized since this was a Commonwealth. There are many causes in justice's courts that can not be appealed to circuit or even quarterly courts. Dispatch of business, economy and prompt administration of justice demand that there should be limitations placed upon the several jurisdictions. The passage

of an act enabling the judges for the next two years to employ clerical aid, and appropriating for that purpose to each one of them the sum of $800 annually, and the increase of minimum amount necessary to confer jurisdiction, would materially lessen the number of appeals and enable them to rapidly decide the large number of delayed cases, and, at the end of two years, to be up with the docket. In order to relieve the taxpayers, to a large extent, from the expense attending this appropriation of $5,600 clerk hire, it is suggested that the offices of deputy sergeant-at-arms, tipstaff and janitor, which cost the State annually $3,285, should be abolished, and the seven clerks required to discharge the slight duties required of these officials in such order as the court should direct.

REVISING THE STATUTES.

Much confusion exists concerning the laws of the State. The book known as the "Kentucky Statutes" has never been adopted by the General Assembly. From it many statutes of importance have been omitted. It is of vast importance that all laws in force should be published in one collective body, and as plainly set forth as possible. Those that are unconstitutional should be eliminated, and those necessary to carry into effect the spirit of that instrument should be adopted. My opinion is, that you could do the State great good by providing for the appointment of two commissioners, with such salary attached as would insure acceptance of appointment by those learned in the law, to revise all the statutes, amend, add to, &c., and report same to the regular session.

This subject was embraced in the call on account of universal complaint of the present condition, and requests that the codification be had; and because it is one of the matters of the first importance to the State.

HOUSES OF REFORM.

Your honorable body at its last session provided for the building of houses of reform, but no provision was made whereby the money should be obtained with which to carry the act into execution.

Information received from the commissioners develops some difficulty in carrying out the measure. Some dispute has arisen as to whether separate houses are to be erected at different places. It is suggested that experience at the deaf and dumb asylum, blind asylum and house of reform in Louisville has demonstrated that

boys and girls may be well controlled in one building by being separated from each other. Should this be recognized as the feasible course to pursue and only one house established, only one set of officers would have to be appointed, thus saving a large outlay by the State.

The government is vested in six commissioners—three women and three men. I am informed that on nearly every question which has arisen before the board the vote has been a tie, and that on this account nothing has been accomplished. To avoid this complication power should be given to appoint another commissioner.

Various other difficulties have been suggested, which will be brought before the Committee on Charitable Institutions.

There is a crying necessity for immediate action in this matter, as there are a number of children in the penitentiaries under sixteen years of age who can not with safety be turned loose on society, and yet who should not be confined with old and hardened criminals. Would it not be wise and humane to adopt such legislation as will provide for the removal of these unfortunate beings, and their confinement with others who may in the meanwhile be convicted, to the house of reform in Louisville, until arrangements can be completed for their reception into the State institution?

PENITENTIARIES.

The present administration has been confronted with unprecedented difficulties concerning the management of the penitentiaries.

The workshops at Eddyville were destroyed in May last, and have not been rebuilt for lack of funds. The chair contractors at Frankfort Penitentiary threw up their contract in April last.

The Commissioners of the Sinking Fund, after much persistent labor, succeeded in employing 1,050 convicts at the latter place, and in building one workshop and adding improvements to another, and hope to be able in the near future not only to place the Frankfort Prison on a self-sustaining basis, but in addition to make something for the State. In making these contracts and improvements Treasurer Long and Auditor Stone are entitled to especial credit, having been selected by the board to look after the details of the same.

Advertisements for labor at Eddyville have been repeatedly published, but the working of convicts at that place has proven comparatively of no importance. If the few men employed there were at the Frankfort Penitentiary the commissioners are assured

that five cents per day additional could be obtained for their labor, and if all the convicts at Eddyville could be transferred to Frankfort there would be no difficulty in employing them, and besides, only one set of officers would be necessary.

The placing of a penitentiary at Eddyville was a mistake in the beginning, and it has proven an incubus on the State and a source of never-failing annoyance, vexation and expense. It is not eligibly situated, and owing to the topography of the country a branch railway, with necessary trestles connecting with the Illinois Central R. R., would cost many thousands of dollars.

To further continue it, can result in no good, and with the concurrence of every member of the Sinking Fund Commission, its abandonment is recommended, the transferring of inmates to Frankfort Penitentiary, and appropriations to build necessary workshops and cells and provide machinery.

If, however, your honorable body shall be of a different opinion, then it is urged that you make provision for the erection of workshops, the purchase of machinery, etc., at each of said penitentiaries.

BANK INSPECTOR.

Experience has proven that the management of the National banks, by reason of the safeguards thrown around them, is superior to State institutions. It is earnestly recommended, that you provide for the appointment of an inspector, with power to inspect and report the condition of all State and private banks, trust companies, building and loan associations, and other like institutions; and compel them, and each of them, through their president or cashier, to make quarterly reports under oath. The salary of this officer should be paid proportionately by the institutions themselves, and fixed at such sum as will command the services of a competent and experienced man. The better security of depositors and stockholders demands that prompt action be taken in this matter.

THE PROCLAMATION.

There are many subjects embraced in the proclamation calling the present session, on account of which criticism has been indulged in some quarters. The subjects were included in almost every instance upon urgent request, and an examination will show they are of such a character as to demand immediate action. Many of them are intended to make effective, important laws (affecting cities

especially) passed, but not signed by the presiding officers at the last session, on account of which inconvenience is suffered every day, and urgent reform and benefit prevented. I will call your attention to some of them as succinctly as possible:

1st. Asylums.—Owing to the fact that when the present administration came into power it was brought face to face with a large floating debt, and the necessary funds were not on hand; some of the asylum warrants were discounted, or money borrowed on the face of them, and interest contracted and paid. Indeed, in some instances this occurred before the change of administration. Of course there was no legal authority for such a step, but it was a matter of necessity. Food, clothing, medicine, and other necessities had to be obtained. Persons who had hitherto taken warrants at their face value refused to continue it, and in order to prevent the destruction of the institutions and untold hardship and suffering to the helpless inmates, such action was had. These acts should be legalized.

It is claimed that many improvements should be made at these institutions. This you will understand when the matters are presented to your committees. The sewage at the Central Asylum is and has been for some time the fruitful source of litigation against the State, and is complained of by persons owning adjoining property. Indeed, I am informed that the value of property contiguous to that asylum has been almost destroyed by reason of unhealthful odors and gases coming from the sewage of the institution. The object of the State is to protect, not to persecute its citizens; to benefit, not to destroy their property; and you are earnestly requested to make some provision concerning this matter, which may as soon as possible relieve the complaining parties.

2d. Convict Testimony.—The code prohibits convicts from testifying in civil cases. The Court of Appeals has decided that this inhibition does not apply to criminal cases, and that it is the duty of the warden, on request by the judge of a court, to convey convicts to any place in the State, to be used as witnesses, and, after they have testified, to return them to the penitentiary.

If a convict is not worthy of belief in a civil case, involving mere matters of property, he should not be, in cases where liberty and life are at stake. The reasons that exist for disqualification in the one are applicable to the other state of case. Besides, the expense of conveyance to and from the penitentiary is an item of no small concern. Only a short while since I received a letter from a circuit judge, notifying me that certain convicts would be sum-

moned, but he thought it would be dangerous for them to come into the community. There are persons now confined, who, if taken back to the locality from which they came, would have to be guarded by soldiers to prevent being lynched, and, in some instances, soldiers would be needed to prevent escape, or release of convicts by their friends.

I recommend that the law be amended by prohibiting them from testifying in any case, except as to crimes which may be committed while they are in the penitentiary.

3RD. BOARD OF PHARMACY.—The law concerning the Board of Pharmacy affords no protection to citizens of the smaller towns, where the present indiscriminate employment of persons, wholly incompetent, is a constant menace to life and health. Prompt action should be had to remedy this evil.

4TH. BOUNDARIES OF CITIES AND TOWNS.—The boundaries of cities and towns along the Ohio river, and possibly in other portions of this State, lying contiguously to other States, as now established, do not embrace all the territory belonging to Kentucky, and thus evil doers evade the law and much valuable properly escapes taxation. In order that these things may be corrected immediate action should be taken.

5TH. CITIES OF THE 2D AND 4TH CLASSES.—In cities of the second and fourth classes, legislation is imperatively demanded looking to the water supply, sewage, school buildings and public libraries, which the public good demands should be adjusted without further delay.

6TH. SAN JOSE SCALE.—Some years ago an insect was imported from Australia into California, known as the San Jose Scale, which inflicts great injury to fruit trees. Since its advent it has found its way into many of the States. When once established it multiplies with wonderful rapidity, and is exceedingly difficult to exterminate. It has attacked nearly all fruit trees east of the Mississippi. The States of New York, Ohio, New Jersey, Delaware, Maryland and perhaps others have enacted laws for protection against its ravages.

The Kentucky Horticultural Society, assembled at Alexandria, adopted a resolution requesting that this matter should be embraced in the call, in order that the fruit industry of the State should be protected at once, so as to prevent injury that will otherwise prove serious and considerable expense that may be occasioned by delay.

7TH. GAS AND OIL WELLS.—Of late, there is considerable activity, capital and enterprise being employed in developing our gas and oil

interests. The statute fails to give the owners of such property the right to condemn intervening land for the establishment of roads to rivers, railroads, etc., such as is given to the owners of mines and stone quarries. On this account the development of these interests is so hampered that they are being seriously retarded, and the statute should be amended so as to be made applicable to them.

8TH. COUNTY INDEBTEDNESS.—Some of the counties, which have contracted large liability for railroad subscriptions, have arranged compromises with bondholders, but are unable to fund their indebtedness, because special acts giving such authority will, in some instances, expire in a short while; and hence, as no power to issue new bonds exists, except under the general law, bondholders will not accept bonds that may issue under it, because the remedies given therein for levy and collection of taxes are deemed inadequate. If these counties are enabled to do so, they can now compromise their indebtedness at small figures; but if not, serious trouble and hardship will result. You will doubtless amend the general law so as to afford the relief so urgently demanded.

9TH. CONVICT COAL.—The coal miners complain that convict coal is being shipped into this State, thereby seriously interfering with their employment. Considering the interstate commerce clause of the National Constitution, the remedy is somewhat difficult. However, cars carrying such coal might be branded "Convict Coal," and the dealers compelled to place it in bins branded in the same manner. These wage-earners should be afforded every possible protection.

10TH. CONSTITUTIONAL AMENDMENTS.—At your last session you adopted a resolution submitting to the voters of the State an amendment to the Constitution empowering the General Assembly by general law to provide certain forms of taxation by municipalities. Under section 257 (Constitution) before an amendment can be submitted to a vote, the Secretary of State shall cause it and the time it is to be voted upon to be published at least ninety days before the vote is to be taken, in such manner as may be prescribed by law. As no manner has been prescribed and no law passed concerning it, and as under section 256 (Constitution) it must be voted on at the next November election, prompt action should be taken.

11TH. "OFFICIAL INDEXERS."—Legislation will be asked concerning the salary of "Official Indexers" and their assistants, which, to be certainly effective, must be adopted before the commencement of the term of those who may succeed the present incumbents.

12TH. PUBLIC PRINTING AND STATIONERY.—The contract for public printing and stationery will be entered into before the meeting of the regular session, hence to make a better contract for the State it is asked that the law regulating same may be amended.

13TH. ENFORCING CONSTITUTION.—Laws should be adopted clearly and plainly carrying into execution sections 205, 244 and 246 of the Constitution.

14TH. JURISDICTION FRANKLIN CIRCUIT COURT.—The legislation recommended in the 39th section of the call is intended, in the one case to give the Franklin Circuit Court concurrent, and in the other exclusive, jurisdiction, so as to save expense attending the prosecution of violators of the law and make it more convenient to enforce its provisions.

15TH. FEES SECRETARY AND ASSISTANT SECRETARY OF STATE.—Much confusion has grown out of the present statute concerning the fees of the Secretary and Assistant Secretary of State, and manner of paying same into the Treasury. Indeed, the law in some respects fails to establish the rate of fees. These fees all go into the Treasury, and the law should be changed so as to ensure a just scale of fees and remove all conflict concerning the same.

16TH. SALES FOR TAXES.—The right of cities and towns to buy property sold for taxes is not clearly defined. Indeed, by some it is contended that they can not make these purchases. The consequence is, as I am informed, that there are millions of dollars uncollected. Every moment that this condition of things continues great damage is accruing, and an unjust burden being borne by those who promptly pay their taxes. All should equally bear the expense of Government, and the escape of one class only adds to the hardship of the other.

17TH. COMMONWEALTH'S ATTORNEYS.—Section 22, article 3, chapter 100, Acts 1891-2-3, makes it the duty of Commonwealths attorneys, except in Franklin county, to attend to all civil cases and proceedings in which the Commonwealth is interested. A punishment should be provided for a failure to perform that duty. This would doubtless save the State a large amount annually, of fees paid to attorneys appointed by the Governor and Attorney-General.

18TH. STATE INSPECTOR.—The duties of this office are onerous, and have been carefully and well performed by the present incumbent. The law pays all the traveling expenses. These have been largely increased by reason of time consumed in various thorough and lengthy examinations and making reports concerning the prison

at Eddyville, the asylums and other matters. The work could have been completed with the aid of a stenographer in one-fifth of the time, and hotel bills to this extent saved. Again, although this officer has been industriously engaged, he has been unable, up to this time, to make various inspections that were required at the close of the last year. The services of a stenographer would have enabled him to complete every report. It is necessary that these reports and investigations should be promptly made. The good of the service absolutely requires it. During his term of office, in my judgment, he has saved the State double the amount of his salary. In order that he may be able to discharge the duties of his office more promptly and effectively, I think he should be allowed to employ a stenographer.

ELECTION OF UNITED STATES SENATOR.

On the fourth day of this month, a vacancy occurred in the office of United States Senator for this State by reason of the expiration of the term of Hon. J. C. S. Blackburn. Under the Statutes of the United States and this State the Legislature elected in November, 1895, was charged with the duty of electing a senator in anticipation of this vacancy, and for that purpose was required, on the second Tuesday after its meeting and organization, to proceed to elect a senator in Congress, and at 12 o'clock meridian on each succeeding day during the session of the Legislature to take at least one vote until a senator should be elected.

Not only do the statutes select the body to perform this duty, but specify the time when the election shall commence and limit it to the expiration of the session. This duty was not performed.

Under another provision of the law your honorable body is allowed to elect after the vacancy occurs.

Consequently, feeling that a senator should be elected and the State given full representation, I did not call the session until after the vacancy occurred, believing that an election before the happening of that event would result in a refusal to seat the senator chosen.

My opinion was based on the statute, named, and the decision of the United States Senate in the case of Jared Williams, where it was held, that although a session of the Legislature had been prorogued by the Governor, the adjournment had, under his order *sine die*, the new session was a separate and distinct session.

Meanwhile, after the vacancy happened, it having taken place

during a recess of your honorable body, desiring that the State should not be left without full representation for any period of time, I appointed a senator by reason of the power vested by subdivision 2, section 3, article 1, Constitution of the United States, which provides "that if vacancies happen by resignation or otherwise during the recess of the Legislature of any State the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancy." The Statute of Kentucky is to the same effect.

From the foundation of the government to 1893, a period of more than one hundred years, the Senate of the United States, by an unbroken line of decisions, sustained the right of the Governor to appoint under the circumstances named; but in 1893, this long-established and time-honored precedent was overturned. In making the appointment, I preferred to be governed by the well-established rule of a century rather than the modern innovation.

I sincerely trust that you may be able to elect a senator at an early day, and that the interests of the State in other important respects may not be again overlooked and neglected.

CONCLUSION.

Trusting that your session may prove beneficial to the Commonwealth, and assuring you of my desire to assist in the good work, I am, with great respect,

WILLIAM O. BRADLEY,

Governor of Kentucky.

March 13, 1897.

ORDER REFUSING COMMUTATION TO JACKSON AND WALLING.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March, 1897.

The common law concerning the crime admitted in the confessions to have been committed, is in force in this State. The confession shows that Pearl Bryan was killed by drugs administered to produce an abortion. If this be true, she being quick with child, as shown by the evidence, the child was killed also. Her death was caused by drugs deliberately administered, the effect of which clearly manifests an utter disregard for human life. The agency employed was not only one from which death or great injury would probably result, but from which, considering its rapid operation, death would necessarily result. Either the physician who administered the drug knew, or had every reason to suppose it would cause death; or should have known it. Under either state of case he was guilty of murder, and Jackson and Walling were, and are equally guilty as joint participators under the Statute of Kentucky. All this must be conceded if the confessions are true.

The confessions, however, are inconsistent and contradictory, utterly at war with every statement that each of the defendants made on the witness stand. It is urged that this should be overlooked, because they were then swearing for their lives. Conceding that their false statements were made to escape danger then pending, it may well be asked, how much greater is the danger which now confronts them when they stand in the shadow of the gallows? If they are excusable for false swearing, then how much more are they excusable and how much more likely is it that they would speak falsely, now?

One of them says that the body was taken away in a cab; the other that it was taken in a wagon. This conflict would be quite immaterial but for the fact that Jackson says they got INSIDE while Wagner drove. The contradiction, therefore, becomes material. Walling says that Wagner and Jackson removed the head, while Jackson says that Wagner did it.

The removal of the corset might have taken place to distribute the blood more generally throughout the system, or it may have been loosened when the injection was administered, and fell while the girl was being conveyed to the place where she was found. The

whole confession bears a striking similarity to the testimony of George Jackson, for it is now admitted that the body was removed by both Jackson and Walling, and both were present when the girl was decapitated, thus destroying the defensive theory on the trial that the tracks were made by others than Jackson and Walling.

The note or letter said by Walling to have been received from Dr. Wagner, asking that the clothing of Pearl Bryan be sent to him, and stating that she was under his care, is not produced, nor its absence in any way accounted for. Not only is the confession a contradiction of the evidence of both defendants, but a flat contradiction of the letter of Walling, sent me only a few days since, and claimed to have been written by him under sense of rapidly approaching and impending death.

These men have not only trifled with human life, but have trifled with the courts, trifled with the executive, and set at defiance the laws of God and man.

If it be established that one criminal after such conduct as this, can by a mere pretended confession, obtain respite, then every other is entitled to like treatment, and this would result in frustrating justice, and bringing the execution of the laws into contempt.

The wounded hand of Pearl Bryan solemnly and surely points to the fact that she was not dead when beheaded. That wound could have been inflicted only, when, during the terrible agony attending her decapitation, she raised her hand in order to ward off the cruel knife.

Dr. Wagner is in the asylum, and is the man of all others by reason of his condition, at whose door defendants would naturally lay this terrible crime. To grant a respite in order that the defendants might be used as witnesses to procure his conviction, would result in delay of at least a year, as experience in the trial of defendants has demonstrated. In view of various conflicts in defendants' statements, no jury could or would believe any statement that either of them might make, and consequently Wagner would not be convicted. Such delay could result in no good, and would only add fuel to the flame, and furnish a further incentive to mob violence in this State.

The claim that Walling was under the influence of Jackson and therefore deserves clemency, can not be considered. He showed himself the willing and ready assistant. Each of them has clearly exhibited a reckless disregard for human life. The confessions, taken in connection with facts and circumstances proven in the case,

show that they committed an atrocious crime. Life is precious to them, but no more so than it was to their victim. Their poor mothers are entitled to sympathy, but to no more than the mother of Pearl Bryan. The law has been set at defiance, the fair name of Kentucky stained with another bloody murder. Twelve men have passed upon the guilt of each. The circuit judge and appellate judges have affirmed their action.

My oath is that "I will see that the laws are faithfully executed." The jury have fixed the penalty—I have a plain duty to perform. It is not my province to make laws, but to enforce them; neither is it my province to fix the death penalty. Nor, is it proper that I should intervene to prevent its infliction when the law and the evidence authorize it.

Respite refused.

(Signed.) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO OF BILL FOR BENEFIT OF MRS. EMMA C. SALYER.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, May 28, 1897.

To the Honorable Senate of Kentucky:

I can not approve Senate Bill No. 40, entitled "An act for the benefit of Mrs. Emma C. Salyer, widow of the late J. P. Salyer." Senator Salyer did not attend the last session of the General Assembly (called session 1897), and I do not think that mileage, stationery account and salary should be voted to his widow for services not performed.

Section 42, State Constitution, provides: "The members of the General Assembly shall severally receive from the State Treasury compensation for their services, which shall be five dollars a day during their attendance and fifteen (15) cents per mile for the necessary travel in going to and returning from the sessions of their respective Houses."

It was not the intention of the framers of that instrument that

any member should be paid per diem or mileage who did not attend the session. If the law prohibits the member from receiving pay under circumstances stated, I am unable to see why another should receive it for him. Besides the bill is in conflict with section 3 of the Bill of Rights.

The fact that legislation of a similar character has heretofore been indulged, can not justify the passage of this law. There should be an end to such legislation, especially in view of the present financial condition of this State.

The bill is therefore vetoed.

(Signed.) WILLIAM O. BRADLEY,
Governor of Kentucky.

ORDER GRANTING PARDON TO GEORGE DINNING.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, July 17, 1897.

The people in many sections of the State seem to feel a deep interest in this case, and petitions and letters from many localities have been received, asking for Dinning's pardon. The decision has been delayed in order to obtain a copy of the evidence and a statement from some of the persons present as to what was proven and done on the trial.

Having inspected the evidence and other papers connected with the application, a most remarkable state of case is disclosed.

In January last, between ten and eleven o'clock at night, a band of twenty-five men, more or less, armed, the leader of whom was disguised with a handkerchief over his face, went as they say on "a peaceful mission," to the humble home of Dinning, and notified him to leave the county in ten days, it having been charged, as they said, that he was guilty of stealing. He denied the charge, and said he could prove by his neighbors that it was false. This did not appease nor satisfy the mob, and he was again peremptorily

ordered to leave in ten days, and to go as far as fifty miles. The evidence up to this point is without contradiction. The members of the band say that they came with no intention to do him harm, and started away, when he, without any provocation, fired from a window above stairs and killed one of their number. That their captain then ordered them to "squat and fire in the direction from whence the shot came," which they did, and then retired with their comrade, who lived only a few moments.

On the other hand, Dinning says, in which he is corroborated by one of his children, that after the notification to leave, shots were fired by the mob into the lower story of the house, one of which struck him in the arm, that he then rushed up the stairway and threw open the window of the second story, at which time he received another glancing shot in the forehead, and fired into the crowd.

The testimony shows that an examination of Dinning disclosed the two wounds.

Witnesses living in the neighborhood say that they first heard three shots, which sounded as if they came from pistols or rifles, then a shot apparently from a shotgun, then a fusilade.

It also appears that an examination the next Monday disclosed the fact that as many as three shots had been fired through the door below. On the day following the shooting, after Dinning learned that he had killed one of his assailants, he went to the county seat and surrendered to the officer of the law. An examination was waived on account of prevailing excitement, and he was sent to Bowling Green, and afterwards to Louisville, for safe keeping. From the latter place, accompanied by two companies of the State Guard, he was taken back to Simpson county, the scene of the killing, and tried and sentenced to confinement in the penitentiary for seven years, and taken to the Eddyville Penitentiary. In a day or two after the killing his house was burned by incendiaries.

When it is known that no indictment was ever found against any member of the band, or against any one who burned the house, and that the grand jury indicted Dinning mainly on the evidence of these self-confessed outlaws, the conviction is easily accounted for. Indeed, his conviction was procured almost entirely upon the evidence of his assailants. And yet they swear that when he asked who they were, they answered through their disguised leader in a disguised voice, that they were his friends.

I have no doubt that the first shots were fired by the mob, because:

1st. According to their statements no shots appear to have been fired by them into any part of the house except into the windows above. The holes in the door below stairs is a flat contradiction of their evidence. They were not fired through the door after the shots from the window were fired, hence they must have been fired before that time.

2d. It is clearly shown that the moon was shining so that the men could be almost recognized; and that all of the twenty-five men, except five who remained in the road, were near the house. It is not reasonable to suppose that Dinning, with a shotgun loaded with small shot, would have fired upon twenty-five armed men except in a case of extreme necessity and when he had been previously assaulted.

3d. Although the defendant was an humble negro, without a friend capable of giving him material assistance, and although he had killed a member of a prominent and influential family, he voluntarily surrendered the next day.

Surrounded by his wife and six small children, this poor and friendless man was ordered, without warrant of law, to leave his little home, after which his house was fired into and he wounded. He defended himself as every dictate of reason and humanity demanded and justified. In protecting himself, he did no more than any other man would or should have done under the same circumstances; and instead of being forced to wear a convict's garb, he is entitled not only to acquittal, but to the admiration of every citizen who loves good government, and desires the perpetuation of free institutions.

Too long have mobs disgraced the fair name of Kentucky, and as long as I am Governor of the Commonwealth, no man, however obscure and friendless, shall be punished for killing a member of a mob who comes to take his life or drive him from his home.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

MESSAGE TO GENERAL ASSEMBLY SESSION 1898.

To the General Assembly of the Commonwealth of Kentucky:

In compliance with constitutional duty this message is communicated, with the hope that—a United States Senator having been elected—important and needful legislation, which has been hitherto neglected, will now receive serious and thoughtful attention.

STATE INDEBTEDNESS.

By authority of law enacted at the last session, the five hundred thousand dollars bonds were prepared and bids taken therefor. These bonds only bear 4 per cent. interest, payable semi-annually, and have but ten years to run, but, despite these facts, they were sold at a premium of 7.47 per cent. This is the best sale of State bonds ever made in the Union, outside of the State of New York.

Below, is appended a statement furnished by the Auditor, of the financial condition of the State on the last day of November, 1897, it being impossible to obtain a statement as of last of December for want of time:

BONDED INDEBTEDNESS.

Coupon Bonds, issued July 1, 1897, due ten years from date, bearing 4 per cent. interest, payable semi-annually	$500,000 00
Certificates of indebtedness issued June 1, 1885, due June 1, 1905, bearing 4 per cent. interest, payable semi-annually	500,000 00
A. & M. College and Normal School Bonds	165,000 00
Old Railroad Script	394 00
Old 30-year issue (1835) supposed to be lost	5,000 00
Old issue from 1840 to 1846	1,000 00
Educational Bonds, bearing 6 per cent. interest, payable semi-annually out of Sinking Fund	2,312,596 86
Total	$3,483,990 86

FLOATING DEBT, PAST DUE, IS:

Outstanding warrants	$1,120,576 31
Estimated unaudited claims	5,000 00
Unpaid appropriations (1894) for asylum buildings	31,071 55
Unpaid appropriation House of Reform	100,000 00
Unpaid appropriation Chattanooga Park	10,000 00
Due asylums	2,700 00
Deficit General Expenditure Fund	130,812 63
Deficit Common School Fund	171,964 84
Total	$1,562,125 33
Add bonded debt above	3,483,990 86
Total indebtedness	$5,046,116 19

RESOURCES OF SINKING FUND ARE:

Balance in Sinking Fund	$462,252 72
406 shares stock Bank of Louisville	24,360 00
Turnpike stock	100,000 00
Total	$586,612 72

After deducting the latter amount, the net amount of indebtedness is $4,459,503.47. Of this amount the educational bonds are not subject to redemption, but constitute a perpetual debt, the interest upon which is payable semi-annually.

It will be observed, that the stock in the Bank of Louisville has slightly decreased in value, while the turnpike stock, owing to the conduct of raiders, is estimated at only one-fourth of its former value.

MOBS.

To the shame of the Commonwealth, I am again compelled to call your attention to the fact that organized bands of lawless men have continued and are continuing their nefarious work throughout the State, notwithstanding the passage of legislation especially intended to prevent their operations.

In Hancock county, in open day and without masks or even pre-

tense of secrecy, a negro was forcibly taken from the jail and hung on the public streets of Hawesville. Rewards were promptly offered, but the coroner's jury, doubtless composed of blind men before whom none but blind witnesses testified, returned a verdict that deceased had lost his life at the hands of persons unknown to them. There can be no excuse or palliation for the conduct of the brute who was swung into eternity, but nevertheless the mob, in hanging him, were guilty of murder.

Such swift punishment is not attended by the anguish and suffering endured by the condemned criminal, and does not inspire the dread or terror of a legal execution. Doubtless, had the guilty wretch been given his choice of punishment, he would have selected that meted out to him. So that, in his illegal execution, the law was robbed of its victim, the punishment inflicted less severe than it would otherwise have been, and the law violated and trampled under foot.

As said in my inaugural, "mob violence (whose home is in the breasts of cowards) should be prevented at all hazard, or, if committed, promptly and severely punished. It is an open declaration of contempt for the laws, the courts and the administration of justice, and, instead of promoting, destroys the welfare of the State. The commission of crime to punish crime can find no apologist in christian civilization."

In this connection allow me to call your attention to the insufficiency of the law concerning an attempt to rape. In such cases, where the person assaulted receives injury, the law should provide punishment by confinement in the penitentiary for not less than ten years, or life, or by death, in the discretion of the jury, as the extent of injury may demand. The fiend who makes an assault on a defenseless woman, with such a hellish purpose in view is equally guilty with him who accomplishes his purpose. But for the sake of law and order and the fair name of the Commonwealth, courts, rather than mobs, should punish him.

Your attention is especially directed to the frequent occurrence of what is called "turnpike raids." Persons engaged in this character of crime have become more emboldened, while law-abiding citizens seem to have become paralyzed. The Martin law, although well intended, has failed to accomplish its purpose. I have faithfully tried to enforce it by offering rewards and employing detectives, but do not know of a single conviction under its provisions. On the contrary, in many localities public sentiment is reported

as endorsing the crime. In nearly every instance where these crimes have been committed the vicious are loud-mouthed in approval, while peaceable citizens, more or less, are over-awed and afraid to speak. This appears strange in a State which boasts of the prowess of her sons. Nevertheless it is true. Be it said, however, to the credit of Kentucky, that the citizens of the greater portion of the State condemn such high-handed outrages. I am satisfied that in numerous instances many of those who pose as good citizens have winked at this outlawry, because they supposed, the result would be the depreciation in value of turnpikes, and thus, enable the counties to purchase them at nominal prices, thereby preventing, in a large degree, the payment of taxes necessary to purchase them. Advantage has been taken by some of the fiscal courts of this condition of affairs, and counties have become beneficiaries of crime, which would have not been committed but for the worthlessness and cowardice of officials and the corruption of citizens, who openly countenanced the law breakers. Frequently, counties have voted for free turnpikes by large majorities and at the same time voted against the issuance of bonds to pay for them. In other words, they declare they will have free roads without making compensation.

Under such circumstances, as might be expected, turnpike stock owned by the State, which was valued at $400,000 three years ago, and which produced nearly $24,000 dividends annually, is comparatively worthless.

In many places, turnpike officials fear to ask for guards lest their houses should be burned or they should be assassinated. In one case, the State Inspector was sent to the scene of trouble to make the application for guards, but on his arrival was notified by the former gate-keepers that they would not collect toll because of fear that the guards would not protect them, or that the guards would be soon withdrawn, when they would be killed. It is very clear in many places that peace officers are in sympathy with the mob, in others, that they prefer that the outrages should continue and the turnpikes be bought for a song, rather than the county should be taxed to pay for guards, and in others, that guards can not be found who have the courage or desire to do their duty. Again, the friends and relations of the raiders, and in some instances the raiders themselves, have been appointed as guards and promptly surrendered to the outlaws. Arbitrary prices, merely nominal, have been placed upon some of the roads, and the owners notified that they must accept them or be forced to cease the collection of toll. But, in all localities the counties have seen that pikes were assessed

at good values and taxes promptly collected. In one instance the raiders carried their work to its proper conclusion by robbing the gate-keeper of the tolls.

This evil, so long continued, is seeking other fields of operation. It naturally occurs to the raiders that if tollgates can be taken with impunity, all other property can be taken in like manner. And so it is, these knights of the road have undertaken to regulate the quantity of tobacco the farmer should cultivate, destroying his plants if he dared to disobey; have notified the miller that he should charge no more for flour than the price fixed by them; threatened with the shotgun and the torch farmers who had posted their lands, if the boards were not taken down and they allowed to hunt without hindrance; and, notwithstanding all this high-handed conduct, not one of the ruffians has been punished.

Candidates for office have been known to openly champion these criminals in order to be, and have thereby been elected; while those who have stood for good government have almost universally gone down in defeat.

If this spirit is not stamped out the day is not far distant when the State will be completely under the control of swash-bucklers and highway robbers, who will rob, steal and murder at will.

The stock in turnpikes owned by the State was bought with taxes assessed upon the whole people, and was thereafter set apart as a portion of the sinking fund, and under the provisions of the Constitution can not be diminished by act of the Legislature until the debt of the Commonwealth is paid. Thousands of public-spirited citizens, and in many instances widows, and the guardians of orphans, have invested in these stocks, relying on the laws of the State and their enforcement, for protection.

Granting, for argument's sake, that free roads are desirable, it by no means follows that their owners should be robbed and plundered.

You are now boldly confronted with the question, whether these crimes are to continue, or whether the State has the will and the power to protect the lives and property of its citizens.

In January, 1896, I recommended in a general message, and afterwards at that session in a special message, and again at the late called session, the passage of a law making the counties where mob violence prevailed responsible in damages to the widows, children or heirs of persons killed, and responsible to those injured in person or property. This law has proven salutary in every State of the Union where it has been enacted. With it, should be connected the absolute right to change of venue, so that trials may be had by

unprejudiced juries in unprejudiced communities. I have been informed, that among other contentions which prevented the adoption of such a statute, it was asserted that corporations would burn their property, or prevent the collection of tolls in order to sue the counties, and that persons would have their relatives killed in order to recover damages from the county. These objections are puerile. The agents or employes of corporations, of course, would be punishable for such crimes, and in such cases no recovery could be had; and with the present disposition to obtain turnpikes at nominal prices, it may be safely assumed that extravagant verdicts would not be rendered. Besides, if the owners of the roads were protected in their rights they would have no disposition to destroy their property, or, if they did, could not carry it into execution without great risk of total loss. The other objection does not merit discussion. Whenever counties are made responsible for the action of mobs, those who pay the taxes will see that the law is enforced, and the bond of sympathy between the raider and the taxpayer will be forever broken.

I again recommend the passage of a law of this character. And, in addition, in order that the Martin law may be enforced, it is recommended, that authority be given, where life or property is threatened, to county judges, in other counties than those where such threats are made, on application, to appoint guards from such locality as they deem best, and send them into the counties where the danger is apprehended. And where persons can not be found who are willing to make an application for guards, or when guards are not furnished on application, or, when appointed, refuse or fail to act; or when persons can not be found who will collect toll, I recommend that the Chief Executive of the State be empowered to place troops at the gates, with the right to collect tolls and account to the proper authority, to be retained on duty by him as long as he thinks necessary. It is unjust that counties which are at peace should be compelled to assist in paying for State troops so employed. In every instance where they have been, or may be so employed, the county where they have acted should be compelled to bear the burden. This may be said to be a severe and costly remedy, but it is better by far than the prevalence of anarchy.

No one more deeply deplores the present condition of affairs than myself, and to no one is it more painful to make such a confession, but when human life is so cheap, when millions of dollars that would otherwise seek investment in Kentucky are being turned into other

channels, when we are becoming a spectacle in the eyes of the people of other States and other countries, not only love for my native State, but official duty, demands plain speech and prompt and severe action.

ECONOMY AND RETRENCHMENT.

It is idle to talk of economy in the public service as long as extravagance is suffered to continue. It is better to curtail expenses than to increase taxes. Hitherto the attention of your predecessors has been called to this matter without success. I hope, however, that different action will be had by you.

Useless offices should be abolished. The Bureau of Agriculture has been fully tested, and if common experience and general opinion are worth anything, has fallen far short of accomplishing any material good. Yet thousands of dollars are expended annually to carry out its purposes. This can be abolished only by constitutional amendment, which I recommend may be done.

Register of the Land Office entails an expense of thousands of dollars each year, without corresponding benefit. The framers of the last Constitution contemplated its repeal, as shown by the provisions of that instrument. It is doubtful whether there is any vacant land in the State, and the main business of the office is to issue patents for land already patented and encumber the dockets with litigation. It could be easily consolidated with the auditor's office and its work fully discharged by one clerk, at an annual salary of $1,200.

The present salaries are in nearly every instance twice as much as they were at the conclusion of the war, when the premium on gold was greater than ever before. There is no reason why such a condition of affairs should exist. Parsimony in salaries is not desirable, on the other hand, extravagance should not be tolerated.

Perhaps the most exhausting drain on the treasury is "Criminal Expenditures." In this are comprised jury fees, witness fees, sheriffs, marshals, jailers and constables' fees, costs of examining courts, etc., etc.

These expenditures are constantly increasing and under the present system will continue to increase.

Much of the expense grows out of postponement of trials, continuances and hung juries. The latter, frequently more than duplicate the fees of witnesses, sheriffs, juries, etc. Not only so, in

this way prosecutions are worn out and many guilty men are acquitted.

These disagreements, almost universally, grow out of indisposition to inflict the death penalty, or differences of opinion as to the extent of punishment. In the United States Courts and the courts of nearly every State in the Union, this difficulty is largely obviated by laws empowering the jury to pass alone on the question of guilt and its degree, and conferring power on the court to fix the punishment.

Witness fees during the last fiscal year amounted to $53,000. By proper legislation this branch of expenditure can be materially reduced. The witness who is forced to travel from remote portions of the county to the county seat is paid exactly the same fee as the witness who resides in the county seat. One dollar per day, if enough compensation to the former, is certainly too much for the latter. Witnesses living within five miles of the courthouse should not receive any pay; those residing ten miles distant should be paid fifty cents per day; and those in the county, whose residences are more than ten miles distant from the courthouse, should receive $1 *per diem*.

In many cases warrants are issued charging grand larceny, when the offense is well known to be petit larceny. Under these circumstances, sheriffs are allowed twenty cents for summoning each witness, and $2 for arresting the defendant, while the examining court is allowed $2 for each day, or not exceeding $4 for presiding in each case. Whenever the defendant is not held over for grand larceny none of these fees should be paid, and thus a material saving will result in sheriffs, constables and examining court fees, as also commitments by jailers pending trial. The fees of sheriffs, constables, marshals and policemen amounted to $44,800, and those of examining courts to $14,424 for the last fiscal year.

As to examining courts, it is quite a common practice to hold a number of examinations on the same day and charge $2 in each case.

The intention of the law was to allow a fee of $2 per day for each day consumed, and it should be so amended as to allow $2 for each day of eight hours or less, with a distinct prohibition against allowing any more than $2, however many cases may be inquired into on that day, and where more than one case can be tried in one day, to require it to be done. It should be made the duty of the county attorney, under penalty, to investigate and make report concerning this class of cases.

Jailers' fees during the last fiscal year amounted to $126,024. As already stated, some of this amount was paid in cases where persons were arrested and committed for grand larceny, when guilty of petit larceny only. The cost of clothing, feeding, lodging, guarding and doctoring the convicts in the State penitentiary, including the salaries of all officials, is only 25 cents per capita each day. It may be true, that owing to the immense quantities purchased, prices are materially lower than in cases where only small purchases are made. But if all this can be done at so small a figure, certainly prisoners in jails could be kept at much less than fifty cents per day. It may be said that in many instances, owing to small amount of business, competent men could not be found who would act as jailer. This can be easily remedied. The present Constitution, section 105, gives your honorable body the right, at any time, to consolidate the offices of jailer and sheriff in any county, as you may deem expedient, in which case the office of sheriff shall be retained, and the sheriff required to perform the duties of jailer. This rule has been followed in many of the States and proven both convenient and economical. I recommend that advantage be taken of this section, all fees for commitment repealed and 30 cents per day allowed for board of the prisoners, except in cities where salaries are fixed.

The laws are too lax regulating the reports of county officers to the circuit judge and the allowances by judges of claims against the Commonwealth. All county officers and all claimants should be required to file reports and claims in writing, properly verified, on the first day of each Circuit Court, the same to lie over for investigation until a day set apart by the court as "claim day," at which time they should be acted on. Claims accruing during the court might be filed on the last day of the court and passed upon that day.

During the two last fiscal years there was paid for pro tem. judges of the Circuit Court the sum of $18,851. Of this amount, in Judge Patton's district there was paid $3,447, while in the Chancery Division of the Jefferson Circuit Court (Judge Edwards), there was paid $3,392.

This is accounted for by the continued illness and incapacity of these judges to serve. More stringent laws should be enacted to curtail this abuse, and in cases of protracted inability to serve after a certain period, no salary should be paid to the regular incumbent. No officer has the right to become a charge on the Commonwealth.

The employment of guards in conveyance of convicts is another

serious depletion of the Treasury. During the last fiscal year the expenditures amounted to $9,927. Under the present law it has been held that guards are entitled in such cases to ten cents per mile going and returning. In my judgment the intention of the statute was to allow ten cents per mile one way, which is amply sufficient. An illustration will show the extravagance of present fees. A trip is made from Louisville to Frankfort and return in one day, distance both ways one hundred and ten miles. One guard is allowed for every two prisoners. Twenty prisoners, with ten guards, are brought to Frankfort, and each guard obtains from the State $11. After paying his railroad fare of $3.30 he has, as the result of his day's work, $7.70. The amount paid the ten guards would be $77 for one day's work. To pay ten cents a mile one way would pay each one of them over and above fare $2.20 for the day. I recommend that fees shall be fixed in such cases at ten cents per mile one way. By properly confining prisoners, when the transportation is by rail, one guard should be able to bring from three to five prisoners, except in cases where rescue or assault is apprehended, in which event, the circuit or county judge might increase the number.

Under the present laws, a large number of persons are yearly sent to the penitentiary, who should be fined and compelled to work out the same on the county roads. The minimum value of an article stolen must be $20 in order to constitute grand larceny, while if an individual should obtain a ten cent beef-steak under false pretenses, or embezzle $5 from an employer, or forge a paper for $1, the crime is punished by confinement in the penitentiary for a period of one year or more. There is no difference in the degree of these crimes, and it is most earnestly recommended that the minimum value of $20 be made applicable to all cases of the character named. By compelling the criminals to work out their fines upon the county roads, the large expense of transporting them to and confining them in the penitentiary, and the erection of additional cell-houses at an early day, may be avoided. Besides, the punishment in many of the cases referred to is too severe and accomplishes no good.

Should the foregoing recommendations be adopted the State will be saved many thousands of dollars annually, and the offenders compelled to work the county roads instead of being imprisoned in the penitentiary, at heavy expense in the way of transportation and costs attending arrest, trial and confinement. It is now apparent that additional cell-room will soon be necessary at both the penitentiaries. This expense would be saved the State should these recommendations be adopted.

PENITENTIARIES.

Shortly after the present administration came into power, the contract with the Frankfort Chair Company was forfeited by the directors of the penitentiary on account of the company's failure and refusal to pay its indebtedness to the State, and the inability, by reason of that fact, of the directors to continue operations. The large amount of floating debt then owing, and which could not be paid for the lack of funds in the Treasury, rendered it imperative in carrying on the work at the penitentiary, to collect from the company all money due. There was no other source from which the funds needful to pay operating expenses could be had. In this condition of affairs the company demanded that the directors should not appoint a superintendent whom they had selected. This demand was disregarded, whereupon the company purchased, at a discount, sufficient amount of warrants owing by the State to cover their indebtedness, and offered same to the auditor in payment, refusing to pay a single dollar in money. By their own action they terminated the contract.

It then became necessary to advertise for bids for convict labor, which was done promptly, resulting in what is known as the "Martin contract," for the employment of 650 men. Considerable complications have grown out of this contract, and, in order that the real merits of the transaction might be understood, I ordered State Inspector Lester to make a careful examination of the working of the same, and for that purpose authorized him to employ an expert accountant. His report will be placed before you, and will doubtless have your close study and attention.

The contract has not realized the money which it was thought it would at the time it was made, and there is now a controversy between the State and Mr. Martin, in which the former claims that the latter owes the additional sum of $23,000.

Following closely upon the termination of the contract with the Frankfort Chair Company came the destruction of the workshops at Eddyville, by fire. This threw out of employment a large number of convicts, and the Mason & Foard Company declined to engage further in business at that penitentiary except to work up a small quantity of material on hand, but agreed to and did hire 400 convicts, at 35 cents each per day, to be employed in the manufacture of shoes and brooms, at the Frankfort penitentiary, provided, that the portion of the shops destroyed by fire prior to December, 1895, should be rebuilt, and an additional building erected.

Under great difficulties the shops were constructed, and, in addition to this, an expenditure of nearly $10,000 made in equipping the Frankfort penitentiary with machinery. That penitentiary is now better equipped with machinery and better prepared to make convict labor profitable than at any time in the past.

After the burning of the shops at Eddyville, the Mason & Foard Company agreed to retain not more than 35 convicts, at 35 cents each per day, to complete the manufacturing of some spoke timber. For a short while this contract continued, work being done in an old shed that had escaped the fire.

In March, 1897, a temporary workshop, costing some $900, was erected, and from 75 to 150 convicts were leased to the Leonard, Taylor Company, for 35 cents each per day, to engage in the manufacture of clothing.

The last General Assembly having failed to make any appropriation, the directors were left with a large number of idle convicts on hand at Eddyville, and no shop in which to employ them. Nevertheless, the directors advertised for the labor of not less than 150 nor more than 300 convicts, when the Leonard, Taylor Company made a bid of 35 cents per head for the convicts per day, to be used in the manufacturing of clothing. Being unable to work these men without shops, the directors persuaded the Leonard, Taylor Company, on June 11, 1897, to agree that they would advance the money necessary to erect the shop, charging 6 per cent. interest on the same, and take in payment the labor of the convicts. After this contract was completed, the directors advertised for the erection of the workshop, and the contract was awarded to F. W. Katterjohn & Sons at $23,000, they agreeing to employ such convicts as were qualified, in constructing the building at $1 per day each, in part payment. The building should have been completed by the 1st day of December, 1897, but owing to unavoidable delay, as claimed by the contractors, is not yet completed, they, however, forfeiting $25 for each day of delay. In a short while it will be completed, and we will then have as many as 1,350 convicts at work, leaving unemployed only those who are unable to labor, and who may be necessary to attend to prison duties.

The sanitary condition of both penitentiaries has been materially improved, the prisoners humanely treated, well fed and clothed, and the grounds extensively beautified.

I suggest that an appropriation be made to pay for the workshop at Eddyville, and thus save the payment of interest by the State.

It should have been stated, that in making of all the contracts

the directors reserved control of convicts, and that the State feeds and clothes them.

Your attention is called to the danger of fire in these institutions. The loss at the Frankfort penitentiary especially, in case of such calamity, would be enormous. In the chair business it is necessary that large quantities of raw lumber should be constantly kept in stock, and also large quantities of lumber, more or less in a manufactured condition. Insurance companies will take but limited risks on this property, and then only at enormous rates. A comparatively recent invention, known as the "Grinnell Sprinkler," has been tested with great profit and satisfaction by many of the large manufacturies and business houses in this and other States. The contrivance is so arranged that when a given degree of heat is generated the plugs in the pipes placed in the ceiling fall out and the water pours down upon and extinguishes the flames. The universal verdict of those who have used it is, that serious damage by fire is rendered impossible, and insurance can be had at comparatively nominal rates. The cost of equipping the shops at Frankfort with this sprinkler would be about $10,000. In the event it should be purchased, the Mason & Foard Company have agreed to pay the State near $150 annually by reason of the protection afforded their property. I recommend that an appropriation be made to give this much-needed protection to the property of the State, and believe decreased rates of insurance will in a short while recompense the outlay.

The directors of the penitentiary at Frankfort are now paying for water the enormous sum of $5,000 per year. The Water Company claims that it is charging no more than the usual rate, and that the charge is reasonable. On the other hand, it is believed by some of the directors that the charge is exorbitant, and permission has been obtained from the city council of Frankfort to lay mains and pipes so as to convey water to the penitentiary and other public buildings. The council, however, required bond from the directors that the city shall be held harmless against all claims for damages growing out of the exercise of the privilege granted. The directors cannot officially give such a bond, and do not care, as individuals, to assume the liability.

I suggest, that you investigate these matters through committees, and take such action as you believe the interests of the State demand.

CHARITABLE INSTITUTIONS.

Our Charitable Institutions are in a most thriving condition. The total expenses of the asylums for six months of 1895, and corresponding months of 1896, are:

	1895.	1896.
Western Asylum	$ 46,303 06	$ 43,773 54
Central Asylum	82,306 01	77,785 52
Eastern Asylum	70,228 86	53,656 92
Totals	$198,837 93	$175,220 98

Showing a decrease of $23,616.95, and an average decrease in per capita of $11.35. The large saving at the Eastern Asylum is in part due to the reduction of salaries of employees, no reduction having been made at the others. Taking into consideration the fact, that during the latter period a large amount of interest was paid in order to obtain money on warrants, there being no money in the Treasury, it is quite clear when the State is ready to make prompt payment, the per capita may be permanently and materially reduced.

In addition to the decrease in expenditures, it is proper to add, that at the Central Asylum an additional $10,000 saved from time to time, has been invested in an ice plant which will furnish all the ice for the institution, and by the sale of ice to the adjoining town of Anchorage, pay the running expenses.

The Blind Asylum, through its excellent management, has saved $17,000, which is now being used in the construction of additional buildings and remodeling the old one.

The Deaf and Dumb Institute has labored under great difficulties for the want of necessary room, but the management has been first-class in every way. I recommend an appropriation for its enlargement. This institution has accomplished great good in graduating many accomplished men and women, whose condition of life otherwise would have been pitiable.

The Feeble-minded Institute has been conducted well, but has met with serious misfortune. The main building was destroyed by fire, and the children removed into the temporary structure erected some years ago when the first main building was destroyed. Shortly after the removal, the temporary structure was burned and the

children removed to the Walcott resident, which was rented for the purpose. The Commissioners, however, with commendable prudence had insured the buildings, from which insurance they collected a sufficient amount to construct a new edifice, which is now complete, fully equal, if not superior, to that destroyed. Aside from these untoward events the institution has been maintained at greatly reduced expense.

The Charitable Institutions of the State are well officered and are moving along harmoniously and successfully, save some immaterial differences in that last named, and will compare favorably with their management in any period of the past. The health of the patients has been unusually good, except at the Eastern Asylum, where an epidemic of typhoid fever has prevailed, caused in the main by defective sewerage. It is recommended, that an appropriation be made to remedy the difficulty. Again, your attention is called to the condition of sewerage at the Central Asylum. For quite a long while, owing to its defective condition, numerous law suits have been instituted against the State, and constant and energetic complaint made by citizens contiguous to the premises. An appropriation should be made to remove complaint and prevent injustice to the injured citizens. The reports of the various superintendents are before you, and to their critical inspection your attention is most earnestly called.

HOUSES OF REFORM.

I again urge upon your honorable body such legislation as will carry into effect the present statute concerning houses of reform. The auditor is of opinion that, as the appropriation of $100,000 is to be paid "out of any funds in the State Treasury not otherwise appropriated," the general expenses and specific appropriations must first be paid, and as these, owing to the accumulation of a large floating debt brought over from the last administration, will consume all the revenue collected, that he has no authority now to issue a warrant to construct the houses of reform. It is recommended that you so amend the statute as to provide specifically for the issual of a warrant, in order that this great work may be speedily completed. I have freely exercised the pardoning power in behalf of children confined in the penitentiary, but in some instances have been compelled to deny it, because of assurances from good citizens that the children were so vicious it would be unsafe to turn them loose on the community. So it is, these unfortunates

who might be reclaimed by proper training, are growing older in crime every day, and the evil is without remedy. A house of reform should be completed at the earliest moment. The bill passed providing for them, is well considered and ably drawn, but experience has proven the necessity for some slight amendments.

Considering the present financial condition of the State, it is suggested that only one of these institutions be erected for the present, in which, by proper management, the inmates may be kept separate from each other; the other to be erected as soon as necessity requires it.

Much confusion has grown out of the number of commissioners provided for. The six are frequently evenly divided, and on this account their efficiency destroyed. The right to appoint another commissioner would remedy this trouble.

BOARD OF CHARITIES AND CORRECTIONS.

The charitable and penal institutions of the Commonwealth should be placed on a thoroughly nonpartisan basis, and officers appointed on account of their especial fitness and experience. Such a system prevails in many States of the Union and in every instance has proven most beneficial. Charities should not be used to promote political ends. Such a practice most frequently results in "stealing the livery of heaven to serve the devil in."

No particular party is responsible for the prevalence of the rule in Kentucky, but each and all are to blame for it. By reason of this system, at the end of every four years, the successful candidates, desirous to reward their friends, turn out of office those who have acquired experience and substitute others to whom the duties are entirely novel. In this way, the State is loser during the time that the new officials are acquainting themselves with their duties. If any of the great mercantile concerns of the country were told that every four years they should select a new set of officers and clerks, not one would agree to continue in business, and if such an experiment should be tried, it would end in bankruptcy.

For years, there has been complaint in this State concerning the management of charitable and penal institutions. How could it be expected that these great interests should thrive, as they deserve, when inexperienced men are so frequently in control. If a change is to be effected, some one must inaugurate the movement, and, with the interest of the State far above party ties, I earnestly call your attention to this great wrong, and recommend its discontinuance.

It is suggested that legislation should be adopted providing for the appointment of three commissioners on the Board of Charities and Corrections. They should be selected purely on account of superior qualification and experience, and the board made as nearly nonpartisan as possible. If necessary, the appointments should be made from any State in the Union. These commissioners should look after the selection of officials to operate the various institutions and recommend them to the Governor for appointment, having in view qualification and experience alone, and in addition, should carefully look after the business and financial interests of each of the institutions. They and the persons recommended by them should be appointed by the Governor subject to confirmation by the Senate; and in order to procure suitable commissioners, provisions should be made for reasonable and proper salaries, and they (commissioners and officers of the asylums and penitentiaries), when confirmed should be retained in office during competency and good behavior.

The law should be made to take effect 1st of January, 1899, because it would be an injustice to those now in office, who gave up their business in order to take positions which they supposed they would hold until the end of the term, and who are doing good work for the State, to be turned out. When the law becomes operative, selections might l any persons who have held these offices in the past and proven themselves to be especially adapted to the work. Of course, if there are any incompetents now in office they sh ld be removed.

It was a serious mistake in the beginning to place the management of prisons in the hands of the Sink'ng Fund Commissioners as directors of the penitentiary. In nearly every instance the State officers, who constitute this commission, have all they can do to attend properly to the duties of their several offices. In not one case out of a hundred, have they any experience regarding the operation of prisons. The duties of the Governor, Attorney-General, Auditor and Treasurer are onerous, and their proper discharge demands their whole time and attention. The consequence is that, in attempting to discharge the duties of the two positions, they will necessarily neglect the duties of one of them. Besides, they have so many friends to reward, in the exuberance of their gratitude, infirmities of applicants are overlooked at the expense of the State.

PUBLIC BUILDINGS.

While I believe in practicing the strictest economy, I am sure there is no economy in failing to provide necessary public buildings.

Kentucky, probably has the most indifferent capitol of any State in the Union, save some of them that have been recently admitted. The dignity and position of the State demands energetic and efficient action in this behalf. The ceiling of the present appellate court room has in the last few years been propped with iron pillars in order to prevent its fall, and only a few days have elapsed since a considerable portion of the ceiling in the Hall of Representatives, fell.

Not only are our public buildings dangerous, but there is not sufficient room in which to transact with rapidity or comfort the business of the State. There is an absence of committee rooms, offices for the judges of the court of appeals and other State officers. The executive office, after the placing of necessary furniture, will not allow the admission of a legislative committee, and the treasurer's office is even worse. The records of the court of appeals, which have been twice destroyed, are kept in an office which is liable to be burned at any time, the library is scattered all over the three buildings and some of it stored in the cellars—in short, there are substantially no accommodations.

As to the Executive Mansion, for years its lower floors have been propped to prevent them from falling, and it required more than seven thousand feet of weather strips to make it comfortable in the winter of 1895-6. The present site is disagreeable, the view from one side overlooking the gloomy walls of the penitentiary, and from another the smoke stack of a large flouring mill near by.

In my first message, the attention of the General Assembly was directed to this subject, and as under the constitution the State had the right to employ convict labor on its public works, and as there was then a large number of idle convicts, it was suggested that they should be utilized in the construction of a Capitol. No action, however, was taken.

There is no economy in constantly improving worthless buildings. The executive lot can be sold for half enough to buy an eligible and comfortable structure.

I urge your honorable body to take the necessary steps immediately looking to the erection of new and suitable State buildings.

If, however, you do not think this advisable, there should at any rate be a fire proof library building and clerk's office erected in order that the public records and books may be preserved.

EDUCATION.

While education can not, of itself, invest the citizen with honesty and patriotism unless his innate consciousness is right, yet it enables him to see more plainly and discharge more wisely every public duty, and gives him a more comprehensive grasp of all the great principles that underlie our structure of government. The common school system is the nursery of liberty, and everything should be done that is calculated to improve and enlarge it. Much progress has been made in this direction, but there is room for greater advancement.

The State tax is as liberal as the present financial condition will allow. Local taxation, however, has proven, by no means sufficient, and our system in that respect is far behind that of many States of the Union. I repeat the language of my first message, that "this comparative failure of local taxation is doubtless, in part, due to the small and isolated districts in many sections of the State. This trouble might be materially lessened by levying local taxation on counties and dividing the amount thus secured per capita among the various districts; or much good might be accomplished by making magisterial districts units for taxation, with divisions per capita among school districts therein contained. In either case, there should be one competent member of the County Board of Education in the district, who, with the other members of the County Board of Education and county superintendent, as chairman, might act. Members of this county board should possess certain specified qualifications and have general supervision of educational affairs in their respective districts; the entire board, however, to have control of affairs in the county, and to meet at stated times and adopt rules for the educational affairs of the county, as well as the employment of teachers for the several districts. The compensation of these members should be nominal, by releasing them from per capita tax, road service, etc. Owing to the contentions that have grown out of elections, in many instances, of incompetent trustees, the employment of teachers, etc., this change would doubtless prove very beneficial. The present trustee system should be abolished. In each sub-district as now organized there should be one trustee charged with minor affairs. He might nominate teachers for the sub-dis-

trict in which he lives, subject to the approval of the county board, and these trustees chosen by election.

"Something should be done also to secure better attendance. Doubtless, improved schoolhouses and accommodations, and more local aid, would, to some extent, assist in this matter. By all means, there should be established and maintained a minimum school term of not less than seven months in every district in the State.

"It is claimed that Kentucky pays twice as much for school books as States north of us. If this be true, such laws should be enacted as will remedy it. If uniformity in text-books should be required, the prices would be necessarily reduced."

And among other ention is called to better school facilities for the negroes. The old common school law, which levied a tax upon blacks and whites to be used separately for each race, was held unconstitutional, and after a vote by the people, the fund was divided equally per capita.

We now have an excellent system of graded schools for the whites, but very poor for the negroes. The same objectionable feature of the old common school law has found lodgment in the graded school system, and only that portion of the proceeds for such schools goes to the colored people which arises from their taxes. Owing to their comparative poverty this sum amounts generally to a pittance. I believe this law will be declared unconstitutional when the test is made, and recommend that legislation be now had to avoid any such difficulty. It is worse than idle to say that the negoes should erect their own graded schools. Having lived in slavery for so many years, and given their labor without recompense to the white man, it comes with a poor grace to reproach them with their poverty. As well might it be said that the common school system should be dissolved because of the poverty of so many whites.

The negro as a citizen, by proper attention, can be made useful, or by neglect rendered vicious and dangerous. Armed as he is with the ballot, his voice is as potent as the white man's in all governmental affairs. Every instinct of self-preservation, every instinct of humanity, requires that he should be given the fullest opportunity to improve, both mentally and morally, and the failure to grant these opportunities endangers our institutions.

The present normal school, near Frankfort, has borne good fruit. The accomplished president has laid his report before you, to which especial attention is called. His contention concerning the division of the A. & M. College fund is of importance and worthy of the

closest investigation. This school is annually graduating worthy men and women who are a credit to their race, and is an engine of great good.

As the colored people are generally poor and unable to pay large costs of transportation, it is suggested that another normal school should be established in Western Kentucky. I am informed that the people of that section are willing to contribute generously, and I recommend that you investigate the matter and take the necessary steps in the premises.

In what I have said I do not wish to be misunderstood. The constitution prohibits mixed schools, and I believe that to be a wise provision. Considering the past slave-holding practice in Kentucky, the feeling that has grown out of the same, and the difference in position between the two races, nothing would be more harmful to the common school interest than to mix them in the schools. It would lead to constant quarrels and contentions, universal favoritism to the whites and the most serious injury to the blacks. The schools should continue separate, but equal privileges should be given the unfortunate people, who stand in such great need of educational facilities.

ELECTIONS.

The ballot is the bulwark of freedom, and upon its fair and untrammeled use depends the perpetuity of our institutions. The corruption of the elective franchise and the defeat of the will of the majority should not be tolerated for a moment. Appreciating the full force of this sentiment the makers of our present Constitution, defining who should vote, provided that "the first General Assembly held after the adoption of this Constitution shall pass all necessary laws to enforce this provision, and shall provide that persons illiterate, blind, or in any way disabled, may have their ballots marked as herein required."

In conformity to the foregoing section, and in order that every man may be able to cast his vote, I again recommend that a circle or square should be placed below each party device, in which the voter may make his mark. Many mistakes are made under the present regulation, as many in one political party as in the other, and in this way persons deprived of their votes. Every facility should be afforded the humblest man in the Commonwealth to intelligently cast his vote and have it counted. . Mutation in poli-

ties in the end brings retribution upon any party that denies or abridges the rights of citizenship.

Where registration is necessary, especially in large cities, it is charged that regularly registered voters, in some instances, are falsely impersonated, and on this account persons who are not entitled, vote, and in this way prevent legal voters from exercising their privileges. As to whether this charge be true I do not know, but the fact that such a thing migh be done is sufficient to call for the enactment of such laws as will in some measure identify the lawful voter.

The intention of the ballot system is to enable every citizen to cast his vote in such a way as to secure perfect secrecy. In view of this intention, it appears improper that in registering voters the officer should have the right to ask and record party affiliation. It is claimed that this is done upon the theory that in primary elections parties may be enabled to control their organization. In places where no registration is allowed no difficulty is experienced in this matter, and none, I presume, would be experienced elsewhere.

Primary elections should be prohibited from being held at the same time or place regular elections are held. They consume time and create confusion and undue excitement. The selection of candidates should not be allowed in any way to conflict with or affect the election of officers.

There is a diversity of opinion as to whether canvassing or examining boards have the right to pass on rejected ballots. This should be made plain and the right of every citizen guaranteed to have his vote counted as cast, whether there is or is not a contest. The law should be made so explicit, that no citizen should lose his vote on account of the technical failure of any officer to discharge a plainly ministerial duty when the officers of the election are satisfied that the ballot was in fact deposited.

Article 13, chapter 41, of Kentucky Statutes, provides penalties against certain frauds in elections, many of which are dead letters because section 1594 prohibits conviction upon the testimony of a single witness, unless sustained by strong corroborating circumstances. Surely, such a safeguard as this is unnecessary, in view of the fact that the defendant is a competent witness.

The practice of corraling voters and, with money and whisky, persuading them to remain away from the polls is quite common.

The law should prevent this, and should in all such cases author-

ize the issuance of a writ of habeas corpus on the petition of any person, and on the trial thereof, then and there to be had, require the release of the person detained. In addition, laws should be enacted with severe penalties against the person or persons having a voter in unlawful custody.

According to the present law, when any party has failed to nominate a candidate by convention or primary election, upon a petition, signed by the requisite statutory number, any individual, however objectionable, may have his name placed under a party device. Frequently this may prove distasteful to the party and should not be allowed.

Section 1458, Kentucky Statutes, prohibits the Secretary of State from certifying and the county clerk from placing the name of a candidate, properly certified to have been nominated, on the ballot whenever notified by such candidate that he will not accept the nomination. Section 1464, Kentucky Statutes, provides that in case of death, removal or resignation, after the printing of the ballot, that certain steps may be taken to meet the contingency. I suggest, that in either state of case referred to in the last-named section, or in the case mentioned in section 1458, it be made the duty of the Secretary of State or clerk to at once give notice to the chairman or Secretary of the State Central, District or County Committee, and that pasters may be provided and used in such cases and proper steps taken by the party organization such as will enable such party to supply the place as provided in section 1464.

Section 1557, Kentucky Statutes, prescribes a fine of $50 and imprisonment in the county jail against any officer, upon whom a duty is imposed in chapter 41, who shall willfully neglect to perform his public duty, or who shall willfully perform it in such a way as to hinder the object of the law. A glance at the many important duties which this section governs will demonstrate that the punishment is entirely inadequate as to officers of registration and officers of regular and primary elections. Particularly, is this true as to the duties assigned to the Secretary of State in certifying nominees; the clerk in the proper preparation and distribution of stencils and ballots; the sheriff in delivering ballot boxes; the county judge in the appointment of officers of election and giving the notice of same; the admission of unauthorized persons into the booth or within less than fifty feet of the polls; the counting of votes and the preservation of contested ballots. In this connection, I fail to see that any punishment is inflicted upon an officer of the election for willfully and

knowingly refusing to receive a legal vote. It is recommended that the law be carefully revised so as to severely punish all violators thereof and make it sufficiently comprehensive to provide safety and security for the voter and certainty that his vote will be honestly counted.

Section 1448, Kentucky Statutes, limits the appointment of officers of election to housekeepers. Many competent persons are excluded by this section, and it should be altered.

SEPARATE COACH LAW.

Proud of the glorious achievement of the white race, believing that it is the superior of every other, that by reason of its advantages in liberty, education and advanced civilization, it can ill afford to place additional burdens upon others that are struggling for improved manhood, and not fearing for a moment that any race will become its equal, I most earnestly recommend the repeal of what is known as the "Separate Coach Law." From 1865 to 1892, a period of twenty-seven years, notwithstanding the prejudices and heart burnings that grew out of the civil war, it never occurred to the General Assembly that such a measure should be passed. The inspiration grew out of the fact that a drunken negro fired from a passing train in Frankfort, wounding an estimable young woman.

While this was most reprehensible, it furnished no excuse, much less justification, for the passage of a law aimed at a whole race of people, generally most kindly disposed. The record of that race during the civil war is one that is not only remarkable, but of which it has the right to feel justly proud. Left in charge of the wives and children of Confederate soldiers, who were fighting to perpetuate their bondage, when their liberty was trembling in the balance, not one instance is recorded in which they were faithless, or in which criminal assault was made, or the torch applied to the houses of their masters. Those of us who owned, or whose parents owned slaves, can well attest their fidelity and the mystic tie of affection existing between them and their masters. And now, after we and those who preceded us, have lived for years, in whole or part, upon their unrequited toil; after the expiration of more than one-third of a century since the priceless boon of freedom was conferred upon them, reason and humanity alike demand that we should extend to them and their descendants the helping hand, that they may be elevated in the realm of citizenship, rather than taunt them with their former state and burn more deeply, if possible, upon their

foreheads the humiliating brand of slavery. There are many persons of our own race with whom we do not desire to be associated in travel, yet by the provisions of that bill they are forced upon us, while we would much prefer the company of intelligent and respectable negroes. Every citizen should be judged according to his conduct, decency and good citizenship, rather than his color; and the slave who, side by side with his master, drove the carriage or played upon the green with his children in old slave days, can not disgrace him, now that he is free, by riding in the same coach, provided that his conduct and character are good.

If it is proper that this bill remain on the statute, why not prevent negroes from riding in the street cars with the whites in our cities? Is the negro in the city entitled to privileges that his brother in the country or smaller towns is not entitled to? Is the white man or woman in the country or smaller towns better, and entitled to more protection than the whites in the cities? In the street cars the races are much more closely associated than on the railroad cars, and yet no complaint is made in that direction.

It has been held by the highest court in the land that this law is inoperative so far as the interstate passenger is concerned, and the negroes from every other State in the Union may pass through Kentucky in any car they prefer, while our own negroes, who, in many instances, are bound to us by ties of affection, must be huddled into a car by themselves.

The old common law has come down to us through hoary centuries. It is the concentration of the wisdom and conservatism of many generations. In its benign provisions, no rule is incorporated that is in keeping with this objectionable statute. It has remained for the civilization of the nineteenth century to discover that which has escaped all others, and to enact a law thoroughly at war with precedent and in contempt of every privilege of citizenship.

For many years we had in this State what was called the "ladies' car," and conductors experienced no difficulty in excluding from it all objectionable persons, whether white or black. If that law was so easily enforced, it appears that a statute clothing every conductor with police power, giving them discretionary power in the seating and supervision of passengers, would accomplish justice for all. Such a law would enable them to place all the rough, indecent, drunken or violent passengers, whether white or black, in a separate

car, thus preventing them from associating with the ladies and gentlemen who occupy another. If you should differ with me in this matter, I trust that you may, at any rate, amend the present law so as to afford the negro a separate car. As the law now stands he is only furnished a compartment of a car, and forced to pay the same rate as his more fortunate white fellow-citizen. He should not be compelled to pay the same fare unless he is furnished with the same conveniences. The operation of the present system is well known to you.

A car is divided into two parts by a partition. In one portion are the negroes, in the other the whites. Frequently the whites are of the worst class of their race, and their oaths and coarse conversation are forced upon well behaved and respectable negro men and women, while every time the door is opened there is poured in upon them the fumes of mean whisky and tobacco.

In what I have said on this subject I am not inspired by any partisan motive. This is not a political question, it is a question of humanity and decency.

PUBLIC MORALS.

The use of intoxicating liquors and the carrying of concealed weapons are the fruitful source of nearly every murder that is committed. Local option and prohibition laws are being evaded and rendered inoperative by reason of the "jug trade." Attempts have been made to punish those who deliver whisky in the counties where such laws are in force, but the Court of Appeals has decided that the place of delivery is that where the jugs are handed to the expressman or common carrier, and in this way an avenue of escape has been afforded, and the platforms of depots in anti-whisky localities are daily covered with jugs. In order to remedy the evil, it is suggested that a law be enacted fixing the legal delivery of intoxicating liquors at the place of destination instead of the place of shipment (except as to original packages from points outside Kentucky), and providing proper punishment for any person, natural or artificial, who delivers the article at the place of destination.

Again, attention is called to the sale of cigarettes and cigarette paper. Their use is universally condemned by the medical profession and every day experience. They invariably impair, and in many instances, especially among the youth of the land, destroy

both body and mind. They beget a taste for even more deadly opiates and intoxicating drinks. I recommend that their sale be prohibited.

ATTORNEYS AT LAW.

Among the professions there is doubtless none that has given to the country more eminent men than that of the law. There is no class more necessary to the protection of life, liberty and property, yet while the law has protected the people from quack doctors, quack druggists, etc., etc., there is but little protection afforded them against shysters and pretenders who have invaded the ranks of this profession and brought it into disrepute. The trouble grows out of indiscriminately conferring licenses. Sympathy for the young man, apparently struggling to better his condition, and liberality, which is not found in other professions, has enabled many undeserving, incompetent and disreputable persons to impose themselves on the public. The press is constantly calling attention to this condition, and I urge upon you the establishment of a higher standard and its strict enforcement.

There are many lawyers in Kentucky of advanced age whose improper and disgraceful practices at the bar are a reproach to the exalted profession of which they are unworthy members. I recommend the adoption of such legislation as will provide punishment for this class of advanced and accomplished shysters, and, if possible, eliminate them from the profession.

COURT OF APPEALS.

Year by year, the docket of this court is enlarged. One cause for it is, that appeals are allowed where the amount in controversy, exclusive of interest and cost, is $100. There is no reason why this rule should be continued. The object of the judicial system is to afford fair and speedy trials. In order to do this, the minimum jurisdiction of all the courts is fixed by statute. To say that an individual who has $100 at stake is entitled to trial in the highest court of the State, as much as the individual who has $100,000, involved, is a senseless platitude. As well might it be said that the poor man who has one dollar involved is entitled to the same right.

It is not a question of right. There must be some reasonable limit placed on the amount in controversy in order to prevent the clogging of the dockets in the various courts, for one court can not de-

termine all the cases that are instituted. Justice and the prompt dispatch of business require that the jurisdiction of courts should be regulated so as to give the necessary time for thoughtful action.

I recommend that the present law regulating appeals to the Court of Appeals be amended by striking out the words "one hundred," and substituting the words "three hundred."

BOARD OF HEALTH.

The report of this branch of the service is before you. There is no State in the Union that expends so small a sum in this behalf as the State of Kentucky, and yet I believe that there is none that has more efficient service. The operations of the board in preventing the spread of yellow fever and the prevention of shipment of diseased cattle into this State is worthy of especial commendation. By their persistent and intelligent action the advertising quack has been driven from the State, on account of which the people have reason to congratulate themselves.

THE STATE GUARD.

This branch of the service has been most admirably conducted, as the report of the adjutant general will show. The State guard has at no time been better equipped and officered, and yet our appropropriation of $7,000 yearly is a mere pittance compared to that made by other States. We have not sufficient funds to hold a brigade encampment, as the number of tents and other equipage on hand is wholly inadequate. This organization for years has been most effective in quelling disturbances and enforcing law. It is recommended, that a tax of one-half cent be levied for the purpose of its better equipment. During the year 1896 no camp of instruction was held because of insufficient funds. This year it was held and at a cost of only $8,600. The preceding camp cost the State nearly $14,000.

CHICKAMAUGA AND CHATTANOOGA NATIONAL PARKS.

An act was passed at the January session, 1896, appropriating $10,000 for the purpose of erecting monuments at Chickamauga and Chattanooga Parks, commemorating the valor of the Union and Confederate soldiers from Kentucky, who in that memorable conflict reflected so much credit on our beloved Commonwealth.

Col. R. M. Kelly, Col. Thomas H. Hays, Col. Jno. H. Whallen and Capt. Jno. W. Tuttle have been appointed commissioners to carry into effect the provisions of the act. The law contemplates the erection of six monuments, three each to the Confederate and Union forces. Owing to the small appropriation it is thought that, if divided into six parts, the monuments erected will attract little, if any, attention. In view of this, I recommend that the act be amended so as to provide for the erection of one monument, and modest markers to indicate positions occupied by Kentucky soldiers during the conflict. This monument would emphasize the fact that though divided in life on the great questions involved in the struggle, they are united in death, and that their countrymen are united now in devotion to the Union and the Constitution.

To my mind there is no more beautiful or patriotic thought connected with that heroic struggle than the mingling of the blue and gray, and the cordial friendship and genuine admiration each entertains for the other. The idea of bringing the survivors together was born of perfect patriotism, and could not have been effected in any other country in the world. It is without precedent, and will most probably remain without imitation.

As we are united in life, and they united in death, let one monument perpetuate their deeds, and one people, forgetful of all asperities, forever hold in grateful remembrance all the glories of that terrible conflict which made all men free and retained every star on the Nation's flag.

THE BATTLESHIP "KENTUCKY."

Heretofore, the thanks of the State have been tendered to the proper authorities for the exalted compliment of giving the name of our State to one of the most magnificent battleships that the inventive genius of this great country has ever conceived.

The honorable Secretary of the Navy has given notice that it will be launched during the latter part of January next. I trust that your honorable body will take such action, concerning this matter, as your patriotism and State pride may suggest, and that the occasion may be made memorable and an inspiration to the rising and future generations, of our Commonwealth.

CONCLUSION.

This is doubtless the last general message I will communicate to you. During my term I have made faithful and diligent effort to maintain law and order; enforce economy in public expenses; advance the cause of education; purify elections, and promote the welfare of the whole people. I have exercised the pardoning power with the greatest caution—pardoning and remitting less than 20 per cent. of the applications, while my immediate predecessor granted relief in 53 per cent., and his predecessor in 45 per cent. of applications, covering the same period. I do not intend to impugn the motives or question the actions of either of these distinguished gentlemen. I only refer to the facts for the purpose of comparison, because a partisan press has seen fit to bitterly condemn me. I may have committed mistakes. This is human. But I trust that a fair-minded people will remember that "to err is human, to forgive divine."

In conclusion, allow me to indulge the hope that during your session we may heartily co-operate for the purpose of advancing the material interests of the State and that more substantial good may be accomplished by you than any of your predecessors.

Respectfully,

(Signed.) WILLIAM O. BRADLEY,

Governor of Kentucky.

MESSAGE CONCERNING TOBACCO SALES.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., January 7, 1898.

To the Honorable Senate of Kentucky:

Herewith is handed to you the report of State Inspector and Examiner Lester, concerning his duties under joint resolution approved March 2, 1896.

I suggest that you take such action concerning the matter as you think proper.

WILLIAM O. BRADLEY,
Governor of Kentucky

The accompanying communication reads as follows, viz:

OFFICE OF STATE INSPECTOR AND EXAMINER,
Frankfort, Ky., January 6, 1898.

To Hon. William O. Bradley, Governor of Kentucky:

By reason of other pressing official work, requiring immediate and constant attention from me for three months past, I failed to report to you my action under joint resolution, No. 1, of the General Assembly, approved March 2, 1896.

I now submit the following: The author of the resolution doubtless intended to confer upon the inspector and examiner plenary power to enforce the law on the subject of the sale of leaf tobacco. But the resolution mentions only the act approved April 5, 1892, entitled, "An act to regulate the sale of leaf tobacco in this Commonwealth," and directs the inspector and examiner, "to investigate any violation of the act, and immediately prosecute before the grand jury, and in the courts of any county in the State any warehouseman or commission merchant who has violated, or who may hereafter violate any of the provisions of said act."

By examination of the act, (being sections 4798 to 4809, both inclusive of Kentucky Statutes), you will perceive that the first nine sections define who are warehousemen, their duties, commissions,

etc. These sections forbid the doing of a number of acts, which growers of leaf tobacco in all parts of the State complain that warehousemen are doing. It is claimed by the tobacco growers that warehousemen in Louisville constantly violate section 4799 by failing to settle with them upon making sale of their tobacco for them, according to the net weight including the sample, which is usually about ten pounds, taken from each hogshead or package of tobacco sold. It is also claimed by the tobacco growers that they constantly violate section 4803 by charging commission for selling and paying over the proceeds to the owner. The only penalty denounced against warehousemen for violating any of the nine sections named is found in section 4807. Under this section the warehouseman is made liable to the party aggrieved in the sum of not less "than twenty-five dollars and not more than one hundred dollars."

The grand jury is given no jurisdiction, in fact there is no penal offense that may be prosecuted in the name of the Commonwealth. Thus it will be seen that the inspector and examiner can investigate the violations only, as the penalty must be recovered by the party aggrieved by civil action.

For the purpose of ascertaining whether or not the general complaint of leaf tobacco growers in the State, that these sections are constantly violated, is true, I made a trip last summer through a number of tobacco growing counties, and conversed with a number of tobacco growers, and examined a large number of the return statements sent to them by warehousemen, to whom they had intrusted the sale of their tobacco, and in every instance I found section 4803, forbidding the charging of commissions, had been violated. I advised each aggrieved person whom I saw as to his rights and remedy under section 4807.

I have been more or less censured by some of the tobacco growers for my failure, as they alleged, to have enforced sections 4810 to 4813 inclusive, of Kentucky Statutes, but you and all those who have been inclined to censure me for alleged failure to discharge my duty, will observe that these sections are no part of the act approved April 5, 1892, mentioned in the resolution named, and as it was not a part of the act, I believed then, and yet believe, I was and am without power or authority to investigate any violations of those sections. However, by inquiring of persons who appeared to know, I am convinced that they are constantly violated, and that great loss and injury results to the tobacco growers of the State from the violations.

I will not venture into details as to how they are violated, for as I construe the resolution, I am without jurisdiction to make an official investigation, and my private information is not sufficient to warrant a statement of facts.

I suggest that you communicate in some way these facts to the present Legislature to the end that the resolution may be amended, so as to confer upon me the power to investigate these violations, and have them punished, or that the Legislature may take some other action to protect the suffering tobacco growers in the State from the wrongs, which I am sure they are suffering, and have suffered for years past.

The duties of my office, as now prescribed by law, if well and quickly done, are more than one man can do, without the aid of a stenographer; if additional duties are to be required of me, I respectfully submit that I ought to be allowed at least $720 per annum to secure the service of one and to pay his traveling expenses when he leaves the seat of government.

All of which is respectfully reported.

C. W. LESTER,

State Inspector and Examiner.

VETO OF RAILROAD COMMISSION BILL.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., February 28, 1898.

To the Senate of Kentucky:

Gentlemen: For the reasons following Senate bill No. 19, is returned without approval:

By its terms the action of the three railroad commissioners in fixing amounts to be collected by companies for their services is arbitrary, absolute and final.

To subject such vast interests to the will of three men, who are not even required to be practicing attorneys, or in the slightest degree to be acquainted with the forms of judicial procedure, appears to me a dangerous power, the exercise of which, without restraint, may produce most serious results. Indeed, substantial destruction to corporate interests may ensue, or, should the commissioners be controlled by corrupt influences (which I do not charge would be the case), the people would awaken to a realization of the fact that instead of obtaining relief, they had only incurred additional burdens.

Under the requirements of the bill, all that is necessary to fix a fine upon the company of not less than five hundred nor more than one thousand dollars for the first offense, is to show that the schedule has been fixed by the commission and disregarded by the company. On this trial the company will not be permitted to go behind the action of the commissioners. It matters not whether the commissioners have made a mistake by reason of ignorance of railroad rates or otherwise; whether they have been controlled by spite, prejudice, or other improper motive; indeed, even though their action may have been corrupt or fraudulent, the facts can not be inquired into, but their acts must remain "as unalterable as the laws of the Medes and Persians."

The fine must be inflicted, the only right secured to the defendant is to prevent the jury, if possible, from inflicting more than five hundred dollars fine, as a punishment. And what is this privilege worth after liability has already been fixed by a proceeding without due process of law, regarding which the courts of the State are powerless to act?

If this commission, in the exercise of its unbridled power, should establish rates disastrous to the general public, the same finality would attach and it would be bound by the same unyielding chains. No court in this Commonwealth is clothed with such extraordinary power.

Such a measure, involving as it does the material interest of thousands of employes in the service of railroad companies; the vast property interests of corporations; the probable decrease of value in corporate property such as will seriously impair the collection of necessary State and county revenue; the commerce of the Commonwealth in mines, railroads and manufactories; preventing in all probability the investment of capital and the development of our material resources; endangering the rights of the people by placing them at the mercy of the railroad commission; in short, affecting the welfare of the whole people of the State, should not in my judgment become a law.

That corporate power should be held in proper check and restrained within legitimate bounds will not be questioned. Such check and restraint, however, should be provided by a statute, which, while it protects the general public, insures a full and fair trial to the corporation.

It is idle to say that remedy may be had by injunction, or by a bill in equity, for any wrongful act of the commission involving the invasion of constitutional rights. The law should be so framed as to render a resort to all such remedies unnecessary. If it be true that redress may be had through injunction, it follows that the powers conferred in the law are the subjects of abuse, for the correction of which remedy must be found outside its provisions.

The act does not provide for any review or appeal. The whole power is intrusted to the commission. It does not, as statutes of similar character, provide for any judicial intervention or investigation. Said the Supreme Court in Johnson v. Towsley (13 Wall, S. C. R., 72): "When the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal within the scope of its authority is conclusive upon all others."

The only theory upon which it is claimed that the courts may interfere with the findings of the commission is based upon the principle that every citizen is entitled to protection against an unconstitutional law. Even if this be correct, it is clear that courts could not relieve the citizen from unreasonable rates, unless they were

of such a character as to destroy the value of, or confiscate his property.

An admission by the friends of the bill that a court could, in the absence of express authority by statute, review the action of the commission after that action has been made final, for the reasons stated, is a substantial confession that the bill is unconstitutional, because a statute which confers authority to invade the constitutional rights of the citizen can not be upheld, and should not receive the sanction of the executive.

The constitutional inhibition against the taking of property without due process of law does not contemplate that the citizen shall be forced to appeal to a court of justice for his protection, but that the law which authorized such taking shall be so framed as to afford him a judicial investigation as a condition precedent to the taking.

It is a weak plea in justification, after one's property has been taken, to say that in order to remedy the wrong, he has the right to appeal to the highest courts of the land to avoid the effects of law which has, in advance, condemned, without affording him a judicial investigation.

To make the schedule fixed, prima facie correct, or what is infinitely better, to give an appeal to some court of justice, properly created and equipped under the Constitution, would relieve the bill of its objectionable features. After a full hearing in such a court, and the establishment by it of a schedule, it would then be entirely proper to punish any violation by infliction of proper pains and penalties. Surely, the judiciary of Kentucky can be trusted. For more than a century it has maintained its dignity and honor, and those who now adorn the bench can not be accredited with less character than their predecessors.

The bill, in substance, gives the commission the power to take charge of and control the operation of railroads in the Commonwealth.

As was well said, in L. & N. Railroad Company v. Railroad Commission of Tennessee (9 Federal Law Reporter, 698): "The regulating power of the Legislature and the courts is sufficient to compel the railroad companies to perform all their undertakings in favor of the public and to prevent or punish all derelictions of duty. The Legislature can enact laws within constitutional limits for the regulation of railroads and railroad operations, but it can not authorize a commission, by direct or indirect legislation, intended to accom-

plish that end, or necessarily involving that result, to take control of their business and operations."

The fifth amendment to the National Constitution provides: "No person shall be held to answer for a capital or other infamous crime, etc., * * * ; nor be deprived of life, liberty or property without due process of law."

The fourteenth amendment to the same instrument declares: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person within its jurisdiction of equal protection of the law."

In our own bill of rights, which is so sacred that it is excepted out of the general powers of government, and declared to "remain forever inviolate," (Sec. 28); it is provided (Sec. 11) * * * "nor be deprived of his life, liberty or property unless by the judgment of his peers or the law of the land."

Again, in section 14, bill of rights, in order to make more clear, if possible, the force of this principle, it is provided: "All courts shall be open, and every person, for an injury to him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay."

That the word "person" as used in the various sections cited, refers to and includes corporations, there can be no question, for corporations are artificial persons, and, besides, to deny them these safeguards would result in their complete annihilation.

Justice Field, of the Supreme Court of the United States, held, that corporations were included in and protected by Amendments 5 and 14, *supra*. See Santa Clara Railroad Tax cases, 9th Sawyer, 165-210; and also Santa Clara County v. Southern Pacific Railroad Company, 118 U. S. S. C., Rep., 394.

If included in these amendments, which are of a kindred character to our fundamental law, it follows that they are included in the Kentucky Bill of Rights. That they are included in the State Constitution, see L. & N. R. R. Co. v. Tennessee, 19 Federal Reporter, 679.

The Court of Appeals of Kentucky, in the case of the City of Louisville v. Cochran, 82 Ky., held, that the expressions, "due course of law," "due process of law" and "law of the land," are interchangeable terms, meaning the same thing.

These terms have been held to mean: "A law that hears before condemning and arrives at a judgment for divestiture of the rights of property:" Varden v. Mount, 78 Ky., 89.

"They can not mean less than a prosecution, or suit, instituted and conducted according to the practicable forms and solemnities for ascertaining guilt, or determining the title to property." Taylor v. Porter, 4 Hill.

"It undoubtedly means in the due course of legal proceedings according to those rules and forms, which have been established for the protection of private rights." Westervelt v. Gregg, 12 N. Y., 209.

These cases are approvingly cited in 82 Kentucky, *supra;* and in that case the court held, that an act of assembly making certain papers conclusive evidence was unconstitutional because, it deprived the citizen of his property without "due process of law."

The act in question does not afford corporations the protection guaranteed by the National and State organic laws. No judicial process is provided, no suit is necessary to be instituted, no pleadings required, no rules and forms are prescribed, as in case of the protection of private rights.

While no property is taken by the operation of the act, the right to use, under its provisions, may be so affected as to render property valueless. Not only property, but the right to use and enjoy it, is secured by the State and Federal Constitutions. To destroy the right to use, to cripple the use so that the value is destroyed, is as unconstitutional as to actually take it without just compensation or due process of law. If the companies are denied all remedy for the wrong inflicted, the destruction of their property becomes as effectual as if it had been taken directly from them by legislative enactment. An authority which permits a party to be deprived of his property by indirection is as much within the meaning and spirit of the constitutional provisions as one that attempts to do the same thing directly.

"In one case it despoils the owner directly, and in the other renders him defenseless against any assault upon his property." Gilman v. Tucker, 26 Amer. St. Report., 473.

The Supreme Court of the United States has, in my judgment, conclusively decided this bill to be unconstitutional, in the case of Chicago, Milwaukee & St. Paul Railway Company v. Minnesota (134 U. S. S. C. R., 418). That decision was rendered on the construction of an act passed by the General Assembly of Minnesota, creating a railroad commission and prescribing its powers and duties. In that act, no hearing was provided for the railroad, but the commissioners had the right to give them notice of certain prescribed rates, and if exceeded thereafter, the roads were made amenable to criminal prose-

cution. In point of fact, although not provided for, the hearing was given. However, in discussing the principles involved, the court conclusively passed upon the constitutionality of the bill now being considered.

Said the court in that case: "In other words, although the railroad commission is forbidden to establish rates that are not reasonable, there is no power in the courts to stay the hands of the commission if it choose to establish rates that are unreasonable and unequal. This being the construction of the statute by which we are bound in considering the present case, we are of opinion that, so construed, it conflicts with the Constitution of the United States in the particulars complained of by the railroad company. It deprives the company of its right to a judicial investigation by due process of law under the forms and with the machinery provided for by the wisdom of successive ages for the investigation judicially of the truth of a matter in controversy, and substitutes therefor as an absolute finality the action of a railroad commission, which, in view of the powers conceded to it by the State court, can not be regarded as being clothed with judicial functions or possessed of the machinery of a court of justice."

It is true that the State courts of Minnesota held, that there was no power in the courts of the State to stay the hands of the commission, if it chose to establish exorbitant rates. The courts of this State might say the same of the present statute, because the commission is made the sole judge of what is reasonable, and from their action no appeal can be taken and no review is provided. It is claimed that the opinion of the Supreme Court, last cited, does not affect the construction of the present law, because, the statute there under consideration did not provide for a hearing before the commission as does the present bill. A careful examination of the opinion, however, will show that the court did not for that reason, but for the reason that the action of the board was made final, declare the act unconstitutional. In the first place, in speaking of the denial of a judicial investigation, that investigation is described as being by "due process of law, under the forms and with the machinery provided by successive ages;" and in the second place, the court makes its meaning perfectly clear by adding: "And substitutes therefor as an absolute finality, the action of a railroad commission, etc." That the court did not intend to say, that any action under any circumstances by such a commission was judicial, is clear, because, both before and since the rendition of that opinion, the same court

held, that "the action of a railroad commission is not judicial, but merely administrative" (116 U. S. S. C. R., 307; 154 U. S. S. C. R., 394). Nor does the decision in the railroad commission cases (116 U. S. S. C. R., 324) in any way conflict with the opinion rendered in the Minnesota case. It is true that it was there declared that the statute of Mississippi, charging such a commission with the supervision and right to fix rates, was constitutional. But the Mississippi statute, while it conferred powers similar to those granted by the bill under consideration, did not make the action of the commissioners conclusive, but provided expressly by section 19 of the act, that it should only be prima facie evidence, thus giving the company the right to inquire into and go behind the findings, whenever an attempt was made to enforce them as provided by section 23 (see pages 312-313). That opinion can not be construed as declaring this bill constitutional, because the provisions of the two bills are entirely different, the very rights being protected in the Mississippi statute which are left without protection or remedy in this.

The opinion of the Supreme Court in the case of Reagen v. Farmers' Loan, etc. (154 U. S. S. C. R.), does not establish a different doctrine to that enunciated in the Minnesota case, because the statute under consideration in that case fully guaranteed to the company or individual a judicial hearing. The Texas statute declared (Sec. 5) that, in all actions between private parties and railway companies brought under the law, the rates, etc., prescribed should be held conclusive and should not be controverted until finally found otherwise in a direct proceeding brought for that purpose under sections 6 and 7 of the act (page 364). These sections give any party in interest the right to file a petition in a court of competent jurisdiction against the commission, setting forth the particular cause for objection, which action is given precedence over all other causes on the docket; and giving, in addition, a right of appeal, returnable immediately to the Court of Appeals, where the same precedence is given over other causes as provided in the inferior court.

In the event the company charged any more than the rate fixed it was declared, that it should forfeit and pay to the State not less than $100 and not more than $5,000.

No indictment was provided for, but this forfeiture could be enforced by civil procedure, and the decision of the court adverse to the schedule fixed by the commission in actions between the parties, of course, barred any recovery on the part of the State.

The action of Reagan, etc., however was not brought in the State court, but was instituted by non-resident parties in the Federal court, in which an attempt was made, not only to restrain the commission from enforcing the schedule fixed, but to prevent them from thereafter fixing any schedule, thereby affecting the whole act. The court granted the relief as to the rates fixed, but refused to prevent the commission from fixing rates under the statute.

In that case the court did not, as contended by the friends of the present bill, decide the statute constitutional, but expressly said, (page 395): "We do not deem it necessary to pass upon these specific objections, because the fourteenth section, or any other section prescribing penalties, may be dropped, from the statute without affecting the validity of the remaining portions, and if the rates established are not conclusive, they are at least prima facie evidence of what is reasonable and just."

Besides, even though it be conceded that the court held that statute to be constitutional, it does not affect this bill, because the provisions of the Texas statute afforded prompt and speedy judicial investigation. That decision sustains the right of the State, through its commission, to regulate rates of transportation in the fullest scope of the term, but does not hold that its action can be made final without a breach of the Constitution. On the contrary, at page 398, they quote approvingly the language of the chief justice in 116 U. S. S. C. R.: "From what has thus been said, it is not to be inferred that this power of limitation or regulation is itself without limit. This power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State can not require a railroad corporation to carry persons or property without reward; neither can it do that which, in law, amounts to a taking of private property for public use without just compensation, or without due process of law."

On the same page, the court recognized the principle established in the Minnesota case, quoting approvingly a portion of same.

The full effect of the Reagen case at last is, that a Federal court may interfere to protect the rights of a non-resident of a State from an injustice growing out of an unauthorized exercise of power under a State statute affecting his rights.

The case in 156, U. S. S. C. R., 649, announces the same doctrine as that contained in the Reagen case, that when a State Legislature has established a tariff of railroad rates so unreasonable as to practically destroy the value of property of companies engaged in the

carrying business, courts of the United States may treat it as a judicial question, and hold such legislation to be in conflict with the Constitution of the United States, as depriving the company of its property without due process of law.

It may be that courts may interfere to secure the citizen in his constitutional rights, and this, I believe, is the full contention, by reason of which it is claimed that the bill herewith returned does not preclude any individual or company from having judicial investigation, and hence, does not take property without due process of law. No Legislature could prohibit a court from affording constitutional protection to the humblest citizen. But the existence of this plain right does not make constitutional an act which, while it deprives the citizen of his property without due process of law, provides no judicial tribunal to which he may appeal, or in which he may seek a remedy for the wrong inflicted. The remedy afforded under the Constitution is intended only to prevent the violation of that instrument and the spoliation of the property of the citizen, and upon that principle alone it is exercised. And if, indeed, this be the only remedy, it is one which exists outside and independent of the bill, which makes the decision of the board final and recognizes no tribunal as having the power to review its action, and after it has taken the property of the citizen without due process of law, finds its only excuse in the fact that the citizen may invoke protection under a principle which is not even remotely recognized in its provisions.

Should the citizen be thus forced to protect himself from spoliation or should the law provide, within itself, a just, simple and ready remedy against the evils which may otherwise be inflicted under its provisions? If the bill fails to thus provide for the protection of the citizen, and assumes upon its face to be, and, in fact, is, final in its operations, except in so far as it may be restrained by an independent action guaranteed as the last resort to the citizen to save himself from destruction by reason of the operation of an unconstitutional statute, should it become a law?

If the executive is satisfied that the act deprives the citizen of such remedies as may be needful to preserve him from wrong, it is not proper to leave the remedy in the hands of courts neither provided for nor recognized by the bill, but to place his veto upon it, and thus defeat, if possible, an unconstitutional measure, rather than avoid the performance of a manifest duty or shift the responsibility upon another department of the government.

The bill is unconstitutional for another reason: It provides that

"any railroad corporation that shall be guilty of extortion, or unjust discrimination or in giving to any person or locality or to any description of traffic, an undue or unreasonable preference or advantage, shall, upon conviction be fined for the first offense in any sum not less than $500 nor more than $1,000, and upon a second conviction, in any sum not less than $500 nor more than $2,000, and upon a third and succeeding convictions, in any sum not less than $2,000, nor more than $5,000." It will be seen that fines are thus inflicted for breaches of Sections 817 and 818 of the Kentucky Statutes, which are identical with sections 224 and 225 of the act of April 5, 1893. From an examination of sections 213 and 214 of the Constitution, it will be seen that they prohibit the corporation from doing any of the acts described in sections of the statute bill named; and section 217 of the Constitution specifically fixes the punishment to be inflicted in case of violation, to-wit: For the first offense, $2,000; for the second offense, $5,000, and for the third the forfeiture of all franchises and privileges.

It is true the bill in question fixes penalties less severe than those fixed by the Constitution. But the General Assembly can not override the plain mandate of the organic law; and hence, the bill is in that respect an absolute nullity. It may be, as the Constitution fixes the punishment, that the court could inflict it, but the discussion of that question is not necessary here. One thing is certain, and that is, that the punishment provided by the act, except as to extortion, is a palpable violation of the supreme law of the State and consequently can not be enforced. The fact that the punishment may be proper and lawful for extortion can not make binding or legal, a law which is otherwise void, or justify its approval.

Respectfully,

(Signed.) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO OF PENITENTIARY BILL.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 1, 1898.

To the Senate of Kentucky:

Gentlemen: Herewith is returned Senate bill No. 67 unapproved for the following reasons:

Both our National and State Governments are divided into three departments, and among them is to be found authority for the doing of every act necessary to full and complete administration. The Constitution of Kentucky declares: "The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them to be confined to a separate body of magistry, to-wit: Those which are legislative to one; those which are executive to another; and those which are judicial to another." (Section 27.)

"No person or collection of persons, being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted."

The fathers of the republic, in the inception of the government, with prophetic vision foresaw the evils that might assail the fair fabric of Constitutional liberty which they were about to erect, and by this division of governmental powers undertook to provide against its destruction.

The fathers of the State, with this example of wisdom and patriotism before them, and impelled by the same motives which actuated their predecessors, embraced the same provisions in the State organic law.

Each of these grand divisions acts as an aid or check upon the others, in so far as provided, but aside from that is independent of, and not subject to any encroachment by either of the others.

The legislature has the supreme power to make laws; the judiciary the supreme power to construe and apply them; the executive the supreme power to execute them.

The legislative can not exercise the powers of a court except in case of impeachment; the judicial can enact no laws; the executive

can neither make laws nor exercise the powers of a court, but is charged with the power of execution.

For dishonorable or corrupt practices, the Legislature may impeach executive or judicial officers; while, on the other hand, the judicial may hold unconstitutional laws enacted by the legislative, and the executive may interpose a veto or refuse to enforce such as are unconstitutional. While the executive may appoint officers, the legislature may withhold confirmation; and, where the judicial is unable to enforce its decrees, and the legislative its laws, the executive may, with the whole power of the Commonwealth, come to their assistance.

These departments, while acting within their proper spheres, are each a help and check upon the other, the whole constituting a perfect system of government.

Each guards with jealous care its privileges, and promptly resents and resists any encroachment by another; and within this system of checks and balances, and the proper distribution and fearless and faithful exercise of these great powers, rests the security of the citizen and maintenance of a republican form of government.

The encroachment of one power upon another, if not properly met and successfully repelled, will surely result in confusion and anarchy, and eventually in the destruction of liberty.

Having in view these plain constitutional provisions and the dire consequences which may flow from their violation, allow me, most seriously, to direct your attention to the provisions of the bill. If, indeed, the effect of the bill is the invasion by one department of another, and you may be convinced of that fact, I doubt not that your patriotism will prove equal to the emergency, and that you will decline to pass the bill over the veto of the Governor.

The commissioners provided for are to be elected by the legislature. If they are legislative officers the bill is constitutional; if not, it is equally plain that the bill is in contravention of the fundamental law.

These officers have to perform no legislative duty. They can enact no law, nor could the legislature delegate to them its power to make law (Clark vs. Rogers, 81 Ky., 43; Commonwealth vs. Addams, 95 Ky., 588). They are not judicial officers, for they are not clothed with judicial powers and can not pass upon property rights; they possess none of the qualifications necessary to the discharge of judicial procedure. And even if they were judicial officers, the legislative could not invade the judicial department by the appointment of its officers.

If these commissioners are neither legislative nor judicial officers, it follows, of necessity, that they are executive or administrative officers. Their sole duty is to execute the law.

This being true the legislative has no power to invade the executive department and appoint or elect officers who are wholly under its supervision and appointment.

The legislative department, under the Constitution, has no right to elect any officers save those who are necessary to the performance of its functions and a United States senator.

The sovereign people have the sole right to elect all officers except those that may be appointed or elected by each department for the purpose of perfecting its organization, or carrying into effect its mandates; and all officers not elective by the people are appointed or elected by the department to which their duties especially appertain.

If the General Assembly may elect these officers, they may elect all others. They may elect the officers of every charitable institution, the assistant secretary of State, the adjutant and assistant adjutant-general, the sergeant-at-arms of the Court of Appeals, the State inspector and examiner, the State mine and assistant mine inspector and even the private secretary of the Governor.

And if all this power were lodged in the legislative department, and it should exercise it, the legislative hall would be turned into a theatre of contention, strife and "confusion worse confounded."

After the various contests were ended, there would be no time remaining for enacting laws, and the very object of the creation of that department would be defeated. Experience in the election of a United States senator alone has demonstrated the truth of this assertion.

If the commissioners are in fact, executive officers the Constitution and decisions of the courts deny to the General Assembly the power to elect or appoint them.

The Constitution of Ohio prohibits the legislature from exercising the appointing power, but nevertheless, the decision in the State vs. Kenton, 7 Ohio, 547, throws light on the question under discussion.

The General Assembly of that State undertook to create a board charged with authority to appoint State House Commissioners and directors of the penitentiary.

In passing upon this law the court held it unconstitutional, saying (page 557): "The official or unofficial character of the offices is to be determined, not by their name, nor by the presence or absence

of an official designation, but by the nature of the functions devolved upon them." And at page 560, continuing, the court says: "To prescribe the manner of elections or appointment to office is an ordinary legislative function. To make an appointment is an administrative function."

The Constitution of Kentucky does not prohibit the Legislature literally from electing or appointing executive or administrative officers, but clearly forbids it by declaring in unequivocal terms that it shall not exercise any function belonging to either of the other departments, except when such right is expressly "permitted or directed." No such right is even remotely, much less expressly, permitted or directed as to the officers created by this bill.

The Constitution of Indiana is almost identical with ours as to the distribution of the powers of government. The General Assembly of Indiana created by statute a State Board of Tax Commissioners, naming the persons who should constitute it. In passing upon the constitutionality of that measure the Supreme Court said, (Langenberg vs. Decker, 131 Ind., 478), speaking of the three great departments:

"The powers of these departments are not merely equal, they are exclusive in respect to the duties assigned to each, and they are absolutely independent of each other. The encroachment of one upon the other is watched with jealous care, and is generally promptly resisted, for the observance of this division is essential to the maintenance of a republican form of government." "It can not be contended (479) that the State Board of Tax Commissioners belongs to the legislative department, for it has no power to enact laws. The General Assembly can not delegate its law-making powers to any other person or body. It can not be successfully maintained that the legislature could confer upon the Governor of the State and the principal administrative officers of the State duties pertaining to the judicial department. As the State Board of Tax Commissioners is neither a legislative body nor a court, it must belong to the executive or administrative department.

"That it does belong to that department, we think, is too plain for argument. It is charged with the duty of executing certain provisions of the revenue law, and when it has performed that duty its function is ended."

It is perhaps unnecessary to add that the act was declared unconstitutional.

In the case of Evansville v. the State, 118 Ind., 426, the court held: "The power to appoint to office is an executive function, and

while the legislative may provide by law for the appointment of all officers not provided for in the Constitution, the appointing power must be lodged somewhere within the executive department of the government."

The Court of Appeals of Kentucky, in Morgan v. Vance, 4 Bush, 323, decided, that the fixing of qualifications for officers by the legislative, under authority conferred by the Constitution from which was omitted any provision of disqualification by reason of the officials having fought a duel, or participated therein, could not dispense with the taking of the dueling oath or render the person eligible, because the power of the removal of such disqualification was given alone to the Governor, and the Legislature could not exercise it.

The highest court of the United States has always guarded with jealous care the rights belonging to each department of the government, and in Kilborne v. Thompson, U. S. S. C. Rep., vol. 103, p. 168, that court held, that the Congress of the United States had no power to punish for contempt, a witness who appeared before it, for refusing to answer a question regarding private citizens whose interests were then involved in a judicial action, the court holding that the action of Congress under such circumstances was an invasion of the judicial power. Indeed, we find from the very definition of "legislative power," that the authority attempted to be asserted in this bill is beyond its scope.

In the American Encyclopedia of Law, vol. 13, page 222, it is defined to be: "The authority under the Constitution to make laws and to alter and repeal them."

In support of which are cited numerous adjudications of the State and Federal courts and elementary authorities.

As said in my first message to your honorable body, I believe that penitentiaries and charitable institutions should be placed under non-partisan control. The officials now intrusted with these affairs can not, after attending properly to the discharge of the duties of the offices they hold, give that time and attention to these institutions that the best interests of the State demand. Past experience shows that under the rule of no party in this State has there been given to these institutions that special care which they require, and that time and again men who have acquired experience valuable to the State have been removed and inexperienced men appointed to their places in order to gratify some political or personal friendship. On each occasion the State has been compelled to pay for the experience of

appointees until they became qualified. This has been an endless chain, which in my judgment should be broken forever.

Such officers should be appointed solely by reason of experience and qualification, and these institutions rescued from the ever-varying changes of politics and personal preference.

The bill in question does not guard in any way against the mistakes of the past, but in my opinion will result in making more partisan the management of these institutions by throwing out of office, in the midst of their terms, men against whom no charge of incompetency can be preferred, and who have made sacrifices by giving up their business at home to accept these positions, and turning loose, without any curb whatever upon it, a board who will doubtless create and supply vacancies in a spirit of partisanship or personal friendship.

That any officer who has shown himself dishonest and incompetent should be removed, will not be controverted; but to remove all, or give the power to do so, indiscriminately, without cause and without charge, seems to me unjust and impolitic, and can but result in evil to the State.

Non-partisan control, which would make efficiency and experience alone the test, could be safely trusted to assume the management of these institutions, but a control, such as that provided for in the bill, would only all to any viciousness of the system which has so long prevailed in the State.

I will add that in my judgment, the emergency declared in this bill does not exist, in fact.

Believing that the bill will result in detriment to the Commonwealth if carried into execution, that in its execution partisan control will be augmented rather than diminished, that it is an invasion of the executive department and unconstitutional, with profound respect for your opinion, and without questioning the motive of any member of this body, in discharge of what I believe to be my duty under the Constitution, this message is communicated.

Respectfully,

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO OF BILL CREATING STATE BOARD OF ELECTION COMMISSIONERS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 10, 1898.

To the Senate of Kentucky:

Gentlemen: Senate Bill 145 is returned herewith without approval.

In my judgment it is unconstitutional and fraught with great danger to free institutions.

The State Constitution confers all the powers of government upon three departments: The legislative, the executive and the judicial, and no one of them can exercise the powers of another except "when expressly directed or permitted" by that instrument.

It can not be claimed that the legislative division can appoint or elect an officer, unless the duties of his office appertain to that department.

The three commissioners, whose election is provided for by this bill are not legislative officers. They can make no law, nor could the Legislature delegate them the power so to do.

On the contrary, their duties are both executive and judicial; executive as to the power of appointment, removal and canvassing the returns; judicial in the decision of contests.

Not only so, from that decision there is no appeal, subdivision 4, of section 12, declaring "the decision of the board shall be final and conclusive."

The Legislature has no more right to elect these commissioners than the Governor has to appoint a clerk of both Houses of that body, or the judges of the Court of Appeals have to appoint the private secretary of the Governor.

In the proper observance of the lines which separate the three divisions of government and the resistance by each of any encroachment by the others, is involved the liberty of the people.

If any one of the departments may infringe upon the privileges of the others, the result must inevitably be disastrous. Suppose, the General Assembly should enact a law declaring all judgments of the courts, or, indeed, any judgment of a court, null and void; or, that the executive should determine to disperse the General Assem-

bly, or, that a court should decide that the Legislature should enact no law, or the Governor's orders should not be obeyed. Can any sane man doubt that anarchy and revolution would be the natural and unavoidable sequence? And in order to prevent any such catastrophe or any conflict of jurisdiction leading to such serious results, our fathers carefully separated the powers of government, divorcing each from the other, except in so far as otherwise "expressly directed or permitted."

Under this system every disaster may be averted, and every power controlled within its orbit. If the Governor should disregard the Constitution, he must answer articles of impeachment, presented by the House before the Senate; if the judiciary should become venal or corrupt, it must pass through the same ordeal, and if the Legislature enacts a law that is unconstitutional, the Governor may interpose his veto and the courts may declare it a nullity.

The officers created by the bill, as already stated, can make no law, hence, they are not legislative. The attempt to confer upon them judicial powers prevents their appointment by the General Assembly. Nor can their election be justified on the ground that they are a court, for the Constitution after creating the appellate, circuit, county, quarterly, police and fiscal courts, declares: "No court save those provided for in the Constitution shall be established."

There is an unbroken current of authority, State and Federal, denying the exercise of such power as that claimed in this measure. In State v. Kennon, 7 Ohio, 547, the court said: "The official or unofficial character of the officers is to be determined * * * by the nature of the functions devolving upon them," and at page 560 declares: "To prescribe the manner of election or appointment to office in an ordinary legislative function; to make an appointment is an administrative function."

Said the Supreme Court of Indiana (Langenberg v. Decker, 133 Indiana, 478): "The powers of these departments are not merely equal, they are exclusive in respect to the duties assigned to each, and they are absolutely independent of each other. The encroachment of one upon the other is watched with jealous care, and is generally promptly resisted, for the observance of this division is essential to the maintenance of a republican form of government * * *. It can not be contended (479) that the State Board of Tax Commissioners belongs to the legislative department. * * * It can not be successfully maintained that the Legislature could confer upon the Governor and the principal officers of the State duties pertaining to

the judicial department. As the State Board of Tax Commissioners is neither a legislative body nor a court, it must belong to the executive and administrative department. That it does belong to that department we think is too plain for argument. It is charged with executing certain provisions of the revenue law, and when it has performed that duty its function is ended."

And, in Evansville v. the State, 118 Indiana, 426, the same court declared: "The power to appoint to office is an executive function, and while the legislative may provide by law for the appointment of all officers not provided for in the Constitution, the appointing power must be lodged somewhere within the executive department of the government."

In the case of Supervisors of Election, 114 Massachusetts, 251, the Supreme Court decided, that an act of the Legislature which undertook to confer upon that court the power to appoint such supervisors was unconstitutional, and refused to make the appointment, saying: "These supervisors, although intrusted with a certain discretion in the performance of their duties, are strictly executive officers. * * * Their duties relate to no judicial suit or proceeding, but solely to the exercise by citizens of political rights and privileges. We are unanimously of opinion that the power of appointing such officers can not be conferred upon the justices of this court without violating the Constitution of this Commonwealth. We can not exercise this power as judges, because it is not a judicial function."

Said the Supreme Court of Tennessee, Jones v. Perry, 10 Yerger, 59·

"The whole judicial power of the State being expressly invested in the courts by the Constitution, the exercise of it by the Legislature transcends the power intrusted to it by the Constitution, and can not be legally carried into effect."

The Federal courts are more particular, if possible, than the State courts, in preventing one department of government from exercising the powers of another.

In McLean, acting commissioner of pensions, the court held that "the pension bureau is not a court, nor can any officer thereof be invested with judicial functions," and that Congress was not authorized to permit the power of a United States District Court to be invoked to compel the attendance of a witness before a pension examiner (37 Fed. Rep., 648).

In Kilbourne v. Thompson, 103 U. S. S. C. R., 168, the highest court of the land held, that Congress could not punish a witness for

contempt, who refused to testify concerning the action of certain individuals whose conduct was then being investigated by a court, because it was an invasion of the judicial department.

In Field v. Clark, the same court said, 143 U. S. S. C. R., 692: "Congress can not under the Constitution delegate its legislative power to the President."

Judge Cooley, in his excellent treatise on constitutional law, page 104, says: "But the apportionment to this department of legislative powers does not sanction the exercise of executive or judicial functions, except in those cases warranted by parliamentary usage, where they are incidental, necessary or proper to the exercise of legislative authority, or where the Constitution itself, in specified cases may expressly permit it."

Again, at page 108, he says: "The legislative power we understand to be the authority under the Constitution to make laws, and to alter and repeal them." He then quotes from Chief Justice Marshall, the greatest of American jurists: "The difference between the departments undoubtedly is that the legislative makes, the executive executes, and the judiciary construes the law."

Our own appellate court has never hesitated, when one department invaded another to declare its action a violation of the Constitution.

In Johnson v. Ferrell, 8 Ky. L. Rep., the court decided, that the Legislature had no right to dispense with allegations in a pleading essential to make out a cause of action in the courts of Jefferson county.

In City of Louisville v. Cochran, 82 Ky., the court held, that an act of the Legislature fixing forms of a petition, restricting the defense and changing the rules of evidence, was unconstitutional.

In Morgan v. Vance, 10 Bush, 324, the court held, that an act of the Legislature which required that collectors of revenue should take an oath to support the Constitution and omitting the dueling oath, was unconstitutional because, under the Constitution, the Governor alone can relieve the citizen who has engaged in a duel.

The opinion in Slaughter v. City of Louisville, 89 Ky., 123, forcibly and plainly defines the powers of the Legislature. Says the court: "It seems to be well settled that the Legislature as the law making department of the State Government, has no constitutional power to fix the valuation of property which is to be taxed upon ad valorem principles.

"The reason for the rule is, that the legislative department has no

judicial, executive, or ministerial powers, and as the valuation in this State belongs to the ministerial powers of government, it follows that the Legislature has no constitutional power to make the valuation."

The opinion of Chief Justice Robertson in Taylor v. The Commonwealth, 3 J. J. Mar., 401, seems to even more conclusively settle the absence of power in the Legislature to pass this bill.

Said he, in delivering the opinion of the court:

"Appointment to office is intrinsically executive," italicizing the word "intrinsically" and capitalizing the word "executive."

Nor, can the bill under discussion be justified by saying that the power of appointing election officers has been heretofore taken from the executive department and conferred on the judicial, in that, it has been vested in the county court, for it has been decided in Pennington v. Woolfolk, 79 Kentucky, 16 to 19, that the county courts, although classed in the judicial department by the Constitution and possessing judicial powers, are not exclusively judicial tribunals; that from their organization, to the present, executive powers have been conferred upon them, which have never been questioned; and that the long continued practical construction to be found in the statute referred to, and which has been acquiesced in by the bar and all the departments of the government for more than three-quarters of a century, dispel all doubt as to the power of the Legislature to confer upon such courts powers that were not judicial. Continuing, the court says: "Since some of these statutes were enacted the Constitution has been twice amended and readopted. The convention must be presumed to have been well acquainted with the fact that these non-judicial powers had been conferred by various acts, and were being exercised by the county courts, and the readoption of the first article in the very words of the former Constitution, was a virtual recognition of the validity of the statutes by which these powers have been, from time to time, conferred."

But in order to avoid the rule that "all appointments are intrinsically executive," it is contended that the offices created by this bill are not appointed, but elective. This can not cure the difficulty. The question at last is, are the offices legislative or executive? If the latter, then no power can select them in any way except the department to which they belong unless the Legislature should make them elective by the people, who are the sovereigns of all power. As said in the Ohio decision, "the official or unofficial acts of the officers are to be determined by the nature of the functions that are devolved

upon them." Nor, can anything which is directly forbidden by the supreme law of the State be accomplished by indirection. The Legislature can not elect officers except those who are necessary to perfect its organization and enable it to discharge its official functions, and a United States senator.

Section 153 of the Constitution declares: "Except as otherwise herein expressly provided the General Assembly shall have power to provide by general law for the manner of voting, for ascertaining the result of elections, and making due returns thereof, for issuing certificates to all persons entitled thereto, and for the trial of contested elections." In other words, it may provide for the manner of voting, for the manner of making due returns, for the manner of issuing certificates, and for the manner of the trial of contested elections. If it is to provide for the MANNER of doing these things, by necessary implication it is forbidden from doing them.

"Every positive direction in the Constitution contains an implication against anything contrary to it which would frustrate or disappoint the purpose of the provision." Cooley's Constitutional Limitations, page 105.

Says Mr. Cooley, page 78, *supra:* "When the Constitution defines the circumstances under which a right may be exercised, * * * * * the specification is an implied prohibition against legislative interference to add to the condition."

The bill under consideration assumes in the first place, the power of the Legislature, not only to create the offices and provide the manner in which the commissioners may be selected, but to arrogate to itself the right to select them, and in this way over-ride the executive department whose duty it is to execute legislative mandates. But it may be said that it did provide the manner, to-wit: That it provides that the Legislature shall elect them. If this be true, that body can under the same reasoning, elect all the three hundred and fifty county commissioners, and every other appointive office in the Commonwealth. The exercise of such power would destroy the very object for which the legislative department was created.

Section 107 of the Constitution declares: "The General Assembly may provide for the election or appointment for a term not exceeding four years, of such other county officers or district ministerial and executive officers as may from time to time be necessary." Section 93, of the Constitution, among other things, provides: "Inferior State officers not specifically provided for in the Constitution, may be

appointed or elected, in such manner as may be prescribed by law, for a term of not exceeding four years, and until their successors are appointed or elected and qualified." It is manifest that the Legislature may provide the manner in which every inferior State officer, not mentioned in the Constitution, may be elected or appointed; and also every county or district ministerial and executive officer as may from time to time be necessary. Will it be contended for a moment that the Legislature would have the power to appoint or elect these officers, when the Constitution describes them as "executive and ministerial officers?" That the Legislature may prescribe the manner of these appointments, so as to enable the executive department to discharge its duties and make effective the execution of the law, there can be no doubt. And there is as little doubt that it can not, of itself, appoint them, or in any way add to or subtract from the power conferred upon it by the Constitution. It will be observed that the object of sections 93 and 107 was not to enable the Legislature to provide for the creation of officers, who were to assume the duties already conferred upon constitutional officers, but to discharge other duties, which might, from time to time, be rendered necessary by improvements that might be suggested or new offices that might become necessary.

If all that is necessary to enable the Legislature to exercise a power vested in another department, is the enactment of a law authorizing it so to do, then it may destroy the usefulness of the other departments, and constitute itself supreme dictator. The officers created by the bill are inferior State officers, not especially provided for in the Constitution, described in section 93 *supra*, and that section authorizes their appointment or election in such manner as may be prescribed by law, the election referred to evidently being by the people and the appointment by the executive department. If the framers of the Constitution intended to confer the power of election and appointment upon the legislative department, they would have provided in so many words that they should be elected or appointed by the Legislature, for if such power was intended to be conferred upon it by the organic law, why should the Legislature be required to enact a law authorizing it to exercise that power? The bill is unconstitutional for another reason: The State Board is composed of State officers, for their jurisdiction extends to and covers the whole State. This being true, the Legislature could not fill, nor could it authorize the board to fill vacancies, even though it had the power originally to create and elect them, for it must be borne in mind that these are elective officers as now constituted.

Section 152 of the Constitution declares: "Except as otherwise provided in the Constitution, vacancies in all elective offices shall be filled by election or appointment. * * * Vacancies in all offices for the State at large, or for districts larger than a county, shall be filled by appointment of the Governor."

But there is another even more serious objection to the bill, and that is, that it is in direct conflict with the bill of rights, which is "excepted out of the general powers of government, and is declared to forever remain inviolate." (Section 23, Constitution.) In this sacred declaration is found the very essence of republican form of government, and its invasion is a desecration of the very altar of constitutional liberty.

The sixth section declares: "All elections shall be free and equal." Appreciating the fact that the fair, intelligent, free and equal exercise of the ballot was the bulwark of freedom, which would successfully resist every encroaching wave of despotism, the patriotic framers of the supreme law of the State solemnly, deliberately and wisely inserted this emphatic provision; and any legislative or executive act, any judicial decision, which prevents or hampers the freedom or equality of elections is an usurpation. The question with which we are confronted at the threshold is, "can and will all elections be free and equal," when regulated by this measure. Since the institution of our State Government, the appointment of election officers has been conferred upon the county authorities of each county, and in this way each subdivision of the State has been guaranteed a voice in local self government. The officers upon whom these duties have been devolved are elected by the people, who have faith and confidence in them. For more than a century there has been but slight complaint of these officers, and the wisdom of their selection has been proven by the test of time. Why is it necessary at this late day to obliterate these old landmarks, and erect new and untried standards under which to conduct elections? It can not be because a new class of citizens have become voters, for this occurred more than a quarter of a century ago.

In my opinion, the reason declared in the emergency clause does not exist. The elections of 1895, 1896, and 1897 demonstrate that it does not. In 1895, for the first time, the Republican party came into power in this State by a plurality of a little less than nine thousand, but no contest was made, and those elected quietly took their places. The General Assembly convened the following year and did not see any necessity for the passage of such a bill as this, or any bill looking to the suppression or prevention of frauds in elections.

In November, 1896, the Republican plurality was only a few hundred, some complaints were made as to two districts, one Democratic and the other Republican, but it appeared that no more votes were cast than the number shown by the assessor's books, and again no contest was made, each person elected being accorded his place. In March, 1897, another Legislature met, and although it had authority under the call, passed no law to prevent frauds in elections.

In 1897 the verdicts of 1895 and 1896 were reversed by a plurality of near seventeen thousand. Complaint was again made of fraud in the same two districts and another, but no contests were made.

In the light of these events it does not appear that there have been any frauds perpetrated in elections which demand or justify the adoption of this law or the declaration in the emergency clause. But if the declaration as to frauds be true, the question arises, will the legislation now enacted prevent the recurrence of the frauds complained of?

If, with the machinery in the hands of so many local agencies, divided politically and being required to recognize equally two parties in the appointment of election officers, frauds can not be prevented, how can it be expected that like occurrence may be prevented by concentrating and centralizing the entire election machinery of the State in the hands of three commissioners of one political party, without any restriction being placed upon them by way of bond and no criminal prosecution provided against them, for any violation of law, or misfeasance or malfeasance in office.

These officers, in case the General Assembly should not be in session, may supply vacancies on the board, and one member may appoint persons to take the places of both the others. A like power is given the county boards to appoint election officers, temporarily however, the permanent appointment to be made by the State board.

The State commissioners have the power to remove any member of the county board and supply the place at pleasure at any time, and the county board the right to remove any officer of election and supply the vacancy at any time. The county board is required to keep a record which shall be public, but the State Board is not required to keep a record which shall be public, so that the latter may hold themselves free from public inspection and criticism. The State Board not only governs the whole machinery in providing local officers, but is given power to count the votes at the Capital when the returns are sent in for Governor, Lieutenant-Governor and other officers elective by the whole State or more than one county, judges and clerk

of the Court of Appeals, circuit judges, Commonwealth's attorneys, representatives in Congress and electors for President and Vice President. In addition, it is made a board for determining contested elections, other than Governor and Lieutenant-Governor, of any officer elective by the whole State, or of a judge or clerk of the Court of Appeals, circuit judge or Commonwealth's attorney, and from its decision there is no appeal.

In the first place the board, when the Legislature is not in session, may perpetuate itself by filling vacancies; in the second it may appoint or remove every county commissioner in the State; in the third it canvasses the returns of all the important offices named; in the fourth it hears contested elections as stated, thus reviewing and completing its own acts, and in the fifth place its decision is absolutely final.

The county board is given the power to appoint officers to conduct elections, canvass the returns, and decide contests in all county offices, except members of the General Assembly. Their action is also final, for no appeal is provided, and it is declared that there "shall be a board in each county with like powers as those mentioned in section 12," conferred on the State board.

In view of all the extraordinary powers conferred, is it possible, much less probable, that the bill is calculated to prevent fraud, or to make all elections free and equal?

And is it not "better to bear the ills we have than fly to others that we know not of?"

By this bill local self government is denied the people, and all power centralized in the hands of a triumvirate that has more power than any court in the Commonwealth. Clothed with both judicial and ministerial functions, having no legislative attributes, it nevertheless stands out in bold relief, the creature of the Legislature, beyond the control of courts and juries, the supreme power of the State and the absolute master of the people.

The bill is unconstitutional for another reason.

Section 51 of the Constitution declares, that "No law * * * shall be revised, amended, or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revised, amended, extended or conferred shall be re-enacted and published at length."

Webster defines "amend" to mean, "by substituting something in the place of that removed."

The bill substitutes the State commissioners in the place of the State Returning Board and State Contesting Board, both of which

it necessarily removes; it substitutes the county commissioners in the place of the county judges, thereby removing them as the agents to appoint election officers. It not only amends the election law, but "revises" its provisions and "extends" them. And while it does all this, it does not "re-enact the sections" thus amended "and publish them at length."

A comparison of the bill with the act of 1892, will show that sections 3, 5, 9, 12 and 13 are amendments to section 2, of article 3, sections 1 and 6 of article 5, sections 3 and 4 of article 8, of the act of 1892. In fact, the bill as constructed leaves in doubt to some extent what the Kentucky law of election is.

All this should have been made plain by clearly setting forth the sections as amended in their appropriate order.

Another serious objection presents itself: Under the bill an election might be rendered impossible, and thus the people prevented from selecting any officers for two years. If vacancies occur while the Legislature is not in session, they can be supplied only by the remaining members of the State board. Suppose the members should die, or two die and one become insane, or that from any unforeseen cause all should be rendered unable to act, then the vacancies could not be supplied until the meeting of the Legislature in 1900.

It is clear to my mind, however, that section 55, of the State Constitution, contains a provision which will prevent this bill from becoming a law until ninety days after the adjournment of the General Assembly. If this be true, no election for commissioners can be had during the present session, and thus, what I believe to be its bad effects postponed, at least until the meeting of the next General Assembly, until which time the State commissioners can not be elected. Said section is as follows:

"No act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when, by the concurrence of the majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journal, an act may become a law when approved by the Governor," etc.

The object of this section was to give the public notice of the contents of every act passed for three months before it became a law, except when the relief given by legislation was of such a character that some great public emergency rendered it necessary that it should go into effect at an early date.

Of this emergency, the General Assembly and the Governor are

made the judges, thus recognizing the checks and balances of the departments, which like a scarlet thread runs throughout the fundamental law. It has been said that if the Governor was disposed to engage in an unlawful act, which demanded for its suppression the enactment of an emergency clause, the Legislature would be powerless to accomplish anything. It may be said with equal force, that if the Legislature in order to accomplish an unlawful purpose incorporates an emergency clause, the Governor can prevent its accomplishment by refusing to approve the bill.

The framers of the Constitution intended to prevent any emergency legislation over the head of the Governor. Had this not been the intention, the old Constitution would not have been changed in this respect, but bills allowed to go into effect at such time as might be fixed by the General Assembly. As the Constitution now stands, there is a specific time upon the happening of a certain contingency when the law takes effect, and that is, it "may become a law WHEN approved by the Governor."

The addition to the bill of the words "or its passage," is unauthorized by and in conflict with the organic law of the State.

Respectfully,

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO GERRYMANDER 8TH CONGRESSIONAL DISTRICT.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 10, 1898.

To the Senate of Kentucky:

Gentlemen: I return Senate Bill No. 54 without approval.

Subdivision 3 of section 2, article 1, Constitution of the United States, provides that the first enumeration for apportionment of representatives in Congress shall take place within three years after the first meeting of Congress and within every subsequent term of ten years, in such manner as they may direct.

From time to time since the first apportionment, Congress has enacted laws regulating the same.

In each of them, so far as I have been able to find, there is incorporated the injunction that representatives in Congress should be elected by "districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants," etc.

In 1890 the General Assembly of Kentucky passed a bill re-apportioning the State into eleven congressional districts. Such bills have been passed every ten years since the first apportionment was made, and it was evidently the intention of the law that such legislation should not be indulged in oftener.

It is clear that Congress has the power to lay down the requirement in the various statutes as to how these districts should be apportioned. State Legislatures may designate the counties, but in doing so must observe the rule that the districts shall be composed of contiguous territory and contain as nearly as practicable an equal number of inhabitants.

The act of 1890 was not in conformity to the act of Congress, but no objection was made to it.

The districts apportioned under that act contained the following populations according to the last census: First District, 170,530; Second District, 174,805; Third District, 176,194; Fourth District, 185,385; Fifth District, 188,598; Sixth District, 160,649; Seventh District, 141,461; Eighth District, 142,626; Ninth District, 176,177; Tenth District, 147,294; Eleventh District, 186,460.

It will be seen that the population of the districts range from 141,461, to 188,598. Owing to the urban character of the Fifth District, which was entitled to but one congressman, its population may be accounted for; but there is no reason why the difference should be so great between the populations of outlying districts, and it is clear that the United States statute was violated.

It is apparent that the object of the act of 1890 was, not to apportion the State into districts as nearly as practicable equal in the number of inhabitants, but to change the political status and to give the dominant party in the State a representation to which it was not entitled under the act of Congress.

And it is even more apparent that the present bill has in view the same object, the taking of Jackson county from the Eighth District, whose inhabitants number only 142,626 under the last census, and placing it in the Eleventh District, whose inhabitants number 186,460 under the same census, thereby decreasing the population of the Eighth District to 134,410 and increasing the population of the Eleventh to 194,676, and it can not be contended for a moment, was done in order to make as nearly equal as practicable the number of inhabitants in each district.

And to make the spirit of legislation even plainer if possible, another bill has been since passed, by which the counties of Monroe and Cumberland, with 19,434 inhabitants have been taken from the Third and added to the Eleventh District, while Metcalfe, with a population of 9,871, has been taken from the Eleventh and added to the Third. So that, if both bills should become laws, the population of the Eleventh District will be increased to 204,339, being 69,829 more than the population of the Eighth. Under the apportionment of the act of 1890 the State in 1896 gave a small Republican plurality.

Only four Republican congressmen were elected, however—a little over one-half of the number elected by the Democrats. This would *prima facie* indicate that the act of 1890 was not drawn in conformity to the act of Congress. The present bill is a palpable violation of the national law, and is doubtless intended to reduce the number of Republican congressmen to three, thereby inflicting greater injustice than the act of 1890. The effect of the bill is to deny representation to the people of the State through the party of their choice, and override an express provision contained in the act of Congress.

Respectfully,

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL REGULATING INTER-STATE TELEGRAMS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 10, 1898.

Gentlemen of the House of Representatives:

Herewith is returned House Bill 172, without signature.

The bill interferes with commerce among the States.

A company which at its own expense gathers news from a part or all the States and Territories of the Union, and in turn sends it out to all or a portion of these States and Territories, has the right, in order to protect itself from loss and insure safe and competent service, to furnish the same to such newspapers as it may choose, upon an agreement with them to pay for it what is considered a just recompense. And if, in order, to make these contracts it becomes necessary to stipulate that only those newspapers which agree to pay for such service shall be entitled to the telegrams, such contract is not against public policy.

The State has no right to interfere with commerce among the States or to restrain it in any way, except in the exercise of its police power, which power is in nowise involved in or exercised by the State in this bill. Section 8, of article 1, Constitution of the United States, places the power to regulate commerce among the States entirely within the control of Congress, and every court of the Union, State and Federal, concedes that no other branch of the government and no State can in any way interfere with Congress in this respect.

In W. U. T. Co. v. Texas, 105 U. S. S. C. R. 460, it was held, that the telegraph is an instrument of commerce, and that the State could not place a specific tax on messages sent out of the State.

In W. U. T. Co. v. Pendleton, 122 U. S. S. C. R. 347, the same court held, "intercourse by telegraph between the States is inter-State commerce, and the State has no authority to regulate the transmission of telegraph messages into other States and their delivery therein." And a statute of Indiana attempting so to do was held an interference with the freedom of inter-State commerce.

To the same general effect see Lelouf v. Port of Mobile, 127 U. S. S. C. R. 640.

The messages sent by the Associated Press Company are essentially from one State to another, and no more control can be exercised over them than could be exercised over any other dispatch of a similar character. The power to regulate such companies is lodged alone in the Congress of the United States.

Respectfully,

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL REPEALING GUARD SECTION MOB LAW.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 11, 1898.

Gentlemen of the House of Representatives:

Gentlemen: Herewith is returned House Bill No. 102, without approval.

The State of Kentucky owned stock in turnpikes in 1895 worth four hundred thousand dollars, on which dividends amounting to near twenty-four thousand dollars, were annually paid. The money with which this stock was purchased was raised by taxing the people of the whole State. This was done to encourage the building of good roads and the development of the resources of the State.

The residue of stock in the various turnpikes is owned by the counties which taxed the people thereof in order to purchase it, and public spirited citizens who invested their money to assist their various localities, expecting as a matter of course that they would be protected in the use and enjoyment of their property.

The State stock was turned into the sinking fund and sacredly set apart by the Constitution for the payment of the State's indebtedness, with the injunction that it should not be diminished until that debt was paid. (Section 48.)

A few years ago the idea was conceived of making all the roads free, and for that purpose the fiscal courts of the various counties were empowered to by them. To accomplish this the counties were empowered to vote to free the roads and for the issuance of bonds with which to pay for them.

Subsequently, votes were taken in many, if not all, the counties where turnpikes were situated, freedom of the roads, I believe, carrying in all of them, but in many instances while it was voted to make the roads free, the issual of bonds was defeated. There was no other manner possible by law in which to pay for them, and the effect of these votes was to free the roads without compensation.

Of course in such instances, the roads could not be made free by law, and a discontent began to manifest itself among those who were unwilling to pay for the roads or wait until other votes were taken for the issuance of bonds. This developed into the systematic organization of bands of worthless vagabonds, the members of which were unable to pay either tolls or taxes, inspired with the belief that all others should be as worthless as themselves and that the owners of turnpike stock were the enemies of society. They went forth armed and masked, in the night time, destroying toll gates and toll houses, in some instances robbing the keepers and terrorizing in many localities the better element of society. To them, a little later was added a number of active sympathizers who (in many instances, foreseeing that such conduct would result in destroying the value of turnpikes, and the taxes levied on their property to pay for them would thereby be materially lessened), did not hesitate to approve their unlawful acts.

The openly expressed sympathy of this respectable element added new zeal and ardor to the cowards and midnight marauders, who had defied law and order, and disgraced the fair name of the State. I have no words in which I can fittingly express condemnation for either of the classes named, or the evil deeds which have resulted from their alliance.

In order to stay the tide of ruffianism which was sweeping over the State, a bill was enacted by your immediate predecessors; and under all sorts of difficulties, with the officers in many sections acting hand in glove with the violators of the law, I have done everything in my power to enforce it. Nothing has operated so seriously to prevent such enforcement as the openly expressed sympathy of respectable people.

During the present session these crimes have multiplied, gates

have been cut down, houses blown up, and to add to the horror of the situation, organized bands have taken human life with the gun, the bludgeon and the halter, and yet the law seems a dead letter and in many instances the peace officers dazed, paralyzed, or in accord with the fiends who have placed an indelible stain upon the escutcheon of the Commonwealth.

I called the attention of your honorable body to the terrible state of affairs existing at the time of your meeting, and earnestly recommended the passage of other laws to strengthen the hands of the executive and prevent the continuance of crime. No such legislation has been enacted, but in its stead, three sections of a statute, which were intended and well calculated to restrain mob violence, have been repealed by the measure now under consideration.

The Constitution of the United States was ordained among other things—"to establish justice, insure domestic tranquillity, promote the general welfare and secure the blessings of liberty." One of its cardinal principles is, that no man "shall be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation." The same rights are declared to exist in sections 11 and 13 of the Kentucky Bill of Rights.

It is idle to boast of these safeguards and the great excellency of our government if any of the restraints now imposed upon lawlessness are to be removed.

I know it has been said that turnpike companies should pay for their own guards. If this rule is to be adopted, the State on account of its stock would become paymaster for a large amount of such expenditures and in this way, instead of the counties where these raids are made, being compelled to pay to prevent lawlessness of their own people, the entire people of the State, although a large majority of the counties are at peace, will be forced to pay the money expended by the State because it is raided by general taxation.

It is not the corporations alone who are protected by the sections repealed, but the State, the county and the stockholders as well. Besides, these persons, or the corporate body for them, pay taxes to support the State and county governments. This being the case, it is but just and proper that they should be protected. Besides, under the sections named, every citizen of the State may invoke protection of his property from destruction at the hands of the mob.

It is said, too, that designing men have in some instances attacked toll gates, in order that they might be called out at public expense

to guard them. This may or may not be true; I know of no authenticated case, however. But whether true or false, it may well be said in response, that if the local authorities would do their duty, such conduct would be rendered precarious, and those who engage in it, detected and punished. Even though such practice has been indulged in, it by no means follows that those who are actually threatened or assailed in their possession should be entitled to no protection.

Private property can not be taken for public use without just compensation. The object of the sections repealed was to prevent this being done, and as the repeal of the sections withdraws from the citizen a necessary protection (now guaranteed by law) to which he is entitled under the Constitution, the bill is not only subversive of good government, but unconstitutional.

It is recited in the bill: "Whereas, A great number of guards are now being ordered under the provisions of said sections 5, 6 and 7, of the aforesaid act at a great expense to different counties in the State, an emergency is declared to exist, and this act shall take effect and be in force from and after its approval by the Governor."

It is not claimed in this emergency clause, that these guards are improperly on duty, and as they were ordered out by officers of the government, the presumption is that it was because of necessity to protect property. This being true, the reasons declared for an emergency show conclusively that no emergency exists.

The bill provides that it shall "take effect and be in force from and after its approval by the Governor."

This being the case, it will not take effect, at any rate until ninety days have elapsed after adjournment, because I can not and will not approve it. Respectfully,

WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO GERRYMANDER 3D CONGRESSIONAL DISTRICT.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT.
Frankfort, Ky., March 12, 1898.

To the Senate of Kentucky:

Gentlemen: I return Senate Bill No. 194 without approval.

Subdivision 3 of section 2, article 1, Constitution of the United States, provides that the first enumeration for apportionment of representatives in Congress shall take place within three years after the first meeting of Congress and within every subsequent term of ten years, in such manner as they may direct.

From time to time, since the first apportionment, Congress has enacted laws regulating the same. In each of these, so far as I have been able to find, there is incorporated the injunction that representatives in Congress should be elected by "districts composed of contiguous territory, and containing as nearly as practicable an equal number of inhabitants," etc.

In 1890 the General Assembly of Kentucky passed a bill reapportioning the State into eleven congressional districts. Such bills have been passed every ten years since the first apportionment was made, and it was evidently the intention of the law that such legislation should not be indulged in oftener.

It is clear that Congress has the power to lay down the requirement in the various statutes as to how these districts shall be apportioned. State Legislatures may designate the counties, but in doing so must observe the rule that the districts shall be composed of contiguous territory and contain as nearly as practicable an equal number of inhabitants.

The act of 1890 was not in conformity to the act of Congress, but no objection was made to it.

The districts apportioned under that act contained the following populations according to the last census:

First District, 170,530; Second District, 174,805; Third District, 176,194; Fourth District, 185,385; Fifth District, 188,598; Sixth District, 160,649; Seventh District, 141,461; Eighth District, 142,626; Ninth District, 176,177; Tenth District, 147,294; Eleventh District, 186,460.

It will be seen that the population of the districts range from 141,461 to 188,598. Owing to the urban character of the Fifth District, which was not entitled to but one congressman, its population may be accounted for; but there is no reason why the difference should be so great between the populations of the outlying districts, and it is clear that the United States statute was violated by the act of 1890.

It is apparent that the object of that act was not to apportion the State into districts as nearly as practicable equal in the number of inhabitants, but to change the political status and give the dominant party in the State a representation to which it was not entitled under the act of Congress. And it is even more apparent that the present bill has in view the same object. The taking of Monroe and Cumberland counties from the Third District, whose inhabitants number only 176,194, and placing them in the Eleventh District, whose inhabitants number 186,460, and taking from the Eleventh District the county of Metcalfe and placing it in the Third District, thereby decreasing the population of the Third District to 169,631 and increasing the population of the Eleventh District to 196,023, can not be contended for a moment was done in order to make as nearly equal as practicable the number of inhabitants in each district. And to make the spirit of legislation even plainer, if possible, another bill has been passed at the present session by which the county of Jackson, with 8,216 inhabitants, has been added to the Eleventh District, increasing the number of its inhabitants to 204,239, and reducing the number of inhabitants in the Eighth District to 134,410.

Under the apportionment of the act of 1890, the State in 1896 gave a small Republican plurality. Only four Republican congressmen were elected—a little over one-half of the number elected by the Democrats. This would *prima facie* indicate that the act of 1890 was not drawn in conformity to the act of Congress. The act under consideration, however, does not leave in doubt the purpose to curtail Republican representation in Congress.

The effect of the bill is to deny representation to the people of the State through the party of their choice, and override an express provision contained in the act of Congress.

Respectfully,

WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO GERRYMANDER APPELLATE DISTRICTS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 14, 1898.

To the Senate of Kentucky:

Gentlemen: Senate Bill No. 156 is returned without approval.

On June 17, 1893, a bill passed by the General Assembly of this Commonwealth, was approved, by which the State was divided into seven appellate court districts. The present bill undertakes to change the boundaries established by that law, so as to exclude the county of Whitley from the third appellate district; and the counties of Harlan, Leslie, Perry, Bell and Letcher from the seventh appellate district and include all of them in the fifth appellate district.

Section 116 of the Constitution of Kentucky provides: "The judges of the Court of Appeals shall be elected by districts. The General Assembly shall, before the regular election, in 1894, divide the State by counties into as many districts, as nearly equal in population and as compact in form as possible, as it may provide shall be the number of the judges of the Court of Appeals, and it may, every ten years thereafter, or when the number of judges require it, redistrict the State in like manner. Upon the creation of new or additional districts, the General Assembly shall designate the year in which the first election for a judge of the Court of Appeals shall be held in each district, so that not more than the number of judges provided for shall be elected, and that no judge may be deprived of his office until the expiration of the term for which he was elected."

The reason that the arranging of other districts was provided for was, that section 113 of the Constitution changed the number of judges from four to not less than five nor more than seven.

It was therefore incumbent on the Legislature to reapportion the State into as many as five districts, and if it should conclude to make no more districts at that time, it had authority to create the other two whenever it saw proper.

The General Assembly, after the establishment of the five districts, had the authority every ten years thereafter, to redistrict the State in like manner.

The General Assembly, however, determined that the court should consist of seven judges, and in 1893 divided the State into seven districts.

Having therefore, fully accomplished the powers and duties devolved upon it, it has no right, until after the expiration of ten years from the first apportionment, to again redistrict the State. If it has no power to redistrict the State, it surely has none to redistrict a portion of it, for the withholding of the major power includes the withholding of the minor. The whole necessarily includes all its parts, the mentioning of one power excludes all others. The effect of the present bill, however, is to redistrict the State by making changes in the three districts, for it by implication declares that the others shall remain as at present constituted. Nor is the bill a mere changing of counties from one district to another, but the distinct formation of three new districts by taking a county or counties from two and placing them in another, and re-enacting the law, specifically naming the counties constituting each of the three districts. If the Legislature may change these districts at pleasure, it may change all, and yet contend that it is not a redistricting, but merely changing the districts.

I know it is contended that the Constitution does not say positively that the General Assembly shall not redistrict the State for ten years. This is entirely unnecessary. The power to district and redistrict every ten years thereafter is a specific, defined power, and can not be contracted or enlarged. Both time and manner having been explicitly stated, no other time or manner can be implied. If the intention of the Constitution was to give the Legislature full power to redistrict at pleasure, it was entirely unnecessary to have said anything concerning the time or manner of redistricting the State, except that the power should be exercised whenever deemed necessary.

The people are the repository of all power. In adopting the Constitution in which was granted a power with directions as to its exercise, all other power was withheld. "Plenary power in the Legislature for all purposes of civil government is the rule. A prohibition to exercise a particular power is an exception. In inquiring, therefore, whether a given statute is constitutional, it is for those who question its validity to show that it is forbidden. I do not mean that the power must be expressly inhibited, for there are but few positive restraints upon the legislative power contained in the instrument. * * * But the affirmative prescriptions, and the general arrangement of the Constitution are far more fruitful of restraints upon the Legislature. Every positive direction contains an implication against anything contrary to it, or which would frus-

trate or disappoint the purpose of that provision." People v. Draper, 15 N. Y., 532, 543. This authority is approvingly quoted in Cooley's Constitutional Limitations, page 105.

Says Mr. Cooley, page 78, *supra:* "Another rule of construction is, that when a Constitution defines the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference to add to the condition, or extend the penalty to other cases."

The act of 1893 was not framed in accordance with the provisions of section 116, Constitution; in this, the districts were not "as nearly equal in population and as compact in form as possible." By the use of this last word, we must assume, that the makers of the fundamental law, did not intend that there should be any latitudinous construction. Hence, the words "practicable" or "convenient," were not employed, but in their stead, the word "possible," which Mr. Webster defines as meaning, "capable of being done."

Notwithstanding this plain requirement, the districts created, range from a population (excluding the fourth, located in Jefferson county) of 227,330 to 307,835; while their areas extend from 4,353 to 7,987 square miles.

Elections have been held since the apportionment in five of these districts, to-wit: The first, second, fourth, fifth and sixth, resulting in the selection of three Republicans and two Democrats, although when the districts were created each of them was Democratic. State elections since their creation have demonstrated that the third and seventh, in which elections are soonest to be held, are probably, if not certainly, Republican; hence, the reason for the present changes. And if these changes can be constitutionally made, counties may be shifted from one district to another, whenever desirable, in such way as to at all times have each district in the State give a majority for the dominant party. In this way many counties may be prevented from having a voice in the selection of an appellate judge, and thus their people deprived of their constitutional privileges. I am told, that owing to this character of legislation, the people of the county of Whitley have not been allowed to vote in the election of an appellate judge for more than seventeen years.

By the present bill, the population and area of the third, fifth and seventh districts are as follows:

	Population.	Square Miles.
Third	273,321	7,237
Fifth	366,143	8,521
Seventh	185,618	5,745

There can not be even a pretense that these districts as now apportioned, are as nearly equal in population or as compact in form as possible.

It will be remembered, too, that there will be no election in the fifth district until 1904, and doubtless this may account for the overwhelming Republican majority in that district as now constituted, which may be easily remedied, however, during the time which will elapse, by the application to it of like treatment contained in the present bill.

The purpose of section 116 of the Constitution, was to remedy the defects of the old system and make the opportunity for such legislation, as that contained in the present bill, impossible.

Respectfully,

WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO RESOLUTION DONATING MONEY TO MRS. BENNETT.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 14, 1898.

To the Senate of Kentucky:

Gentlemen: Senate Resolution No. 3 is herewith returned without approval.

On the twenty-seventh day of March, 1896, I vetoed a resolution framed in substantially the same words as this.

Since that time, I have had no reason to change the opinion then entertained.

Sympathy for the living and respect for the dead should not control in a matter of this character. That either emotion might prompt those who are generous to contribute liberally from their own means can not be denied; but such emotions do not justify an expression of generosity at the expense of the tax-payers of the State.

This resolution appropriates out of the treasury the sum of thirteen hundred and twenty-seven dollars, being the salary of a judge of the Court of Appeals during the period named therein.

On the sixteenth day of August, 1894, the successor of Judge Bennett was appointed and served out the fraction of Judge Bennett's term. So that, during the period covered by the resolution, save seven days, the State was paying the full salary to Judge Bennett's successor.

The effect of the resolution is to have the Commonwealth pay the salary of two judges of the Court of Appeals from the same district during the same period, when it was receiving in return the services of but one. In other words, the resolution compels the payment of a salary already paid.

I find no provision in the Constitution authorizing payment for services which have not been rendered. It is true, that such appropriations have been made in the past, but it is equally true that they have also been refused, notably in the instance of Mrs. James H. Garrard, when a bill was introduced to pay her a portion of the salary to which her husband would have been entitled, had he not died.

It is declared, among other things, in section 2, Bill of Rights, embraced in the State Constitution: "No grant of exclusive, separate

public emoluments or privileges shall be made to any man or set of men, except in consideration of public service."

This does not and can not mean that those who have performed public service, however able, for which they have been paid, are entitled to be again remunerated; and it surely does not imply that when one was dead, and did not and could not perform public service, which service was performed by another, he should receive compensation therefor through a survivor or representative.

Besides, the Commonwealth is largely indebted, and it appears to me that we should "be just before we are generous."

Respecting the memory of the lamented dead and sincerely sympathizing with his widow, I am nevertheless impelled under my oath of office to refuse to sign the resolution.

Respectfully,

WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL GRANTING CERTAIN PRIVILEGES TO JAILER CITY OF LEXINGTON.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 15, 1898.

Gentlemen of the House of Representatives:

House Bill No. 97 is hereby returned without my signature.

The bill undertakes to amend section 28 of an act for the government of cities of the second class, by conferring on the jailer of such cities, the right to contract with the city in furnishing macadam for streets. This privilege is attempted to be conferred as a part of the section which prescribes the qualification and duties of that officer, and is therefore wholly foreign to it.

Section 12 of article 10 of the act attempted to be amended prohibits, under penalty, any city officer from being or becoming directly or indirectly interested in any contract with or work done by or supplies furnished for the city. A similar provision will be found in the charter of cities of every class.

The act, therefore, confers a special privilege upon one of a class, which is denied to every other member of that class, and is in conflict with the entire law regulating municipalities.

The purpose of the law was and is to prevent corruption in city government.

Believing the bill to be impolitic, unwise and unconstitutional, I am compelled to return it without signature.

Respectfully,

WILLIAM O. BRADLEY,
Governor of Kentucky.

MESSAGE CONCERNING PREVALENCE OF SMALL POX.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, Ky., March 15, 1898.

To the General Assembly of the Commonwealth of Kentucky:

I have received information from the Mayor of Middlesborough that there are now seventy cases of small-pox in the city and four hundred "suspects;" that the county court of Bell county refuses to make any appropriation, and that the city of Middlesborough has no money to make the appropriation necessary to care for those who are sick and guard those who have exposed themselves to the disease. I am also informed that those afflicted with the disease are left without food. I understand that this terrible disease is prevailing in other portions of Kentucky. The board of health has no appropriation out of which they can extend any substantial aid.

It appears to me that the interest of humanity, as well as the best interest of the entire State, demands that your body should take immediate action concerning this matter.

Under these circumstances, I most earnestly recommend that you make such appropriations as you may think necessary to prevent the further spread of the disease. This appropriation might be placed under the control of the chairman of the State Board of Health, with directions that he make report at the next meeting of the Legislature of the disposition he has made of same.

Respectfully,

WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL AUTHORIZING PAYMENT CERTAIN IDIOT CLAIMS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
March 16, 1898.

Senate Resolution No. 10, entitled "Resolution providing for the payment of certain idiot claims," is not approved.

The fact that those who have had charge of idiots have failed to comply with the laws of the State as to having inquests held, does not authorize such legislation. The cost of maintaining idiots is already large, and if restraints are to be disregarded and special legislation indulged in, will be greatly increased.

The act is special in its character and forbidden by section 59 of the Constitution.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO RESOLUTIONS FOR BENEFIT CERTAIN CIRCUIT CLERKS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
March 16, 1898.

I will not approve Senate Resolution No. 8, entitled "Resolution for the benefit of circuit court clerks."

Section 161 of the Constitution is as follows: "The compensation of any city, county, town or municipal officer shall not be changed after his election or appointment, or during his terms of office....."

The Court of Appeals in Bright v. Stone, Auditor, Mss. opinion November 12, 1897, held, that the act of 1894, allowing circuit court clerks five dollars' fee in each felony case, was unconstitutional, in that, it increased the salaries of clerks who were in office at the time of the passage of the bill, and who, when elected, were not entitled by law to charge such a fee.

The effect of that opinion is to render the clerks who have received these fees responsible to the State for their return.

The opinion is in line with that of Commonwealth v. Addams, 95 Kentucky Reports, and is a plain and proper construction of the Constitution.

The purpose of the act is to render ineffective the decision of the court and attempt to accomplish by indirection the payment of fees, which are not authorized by the Constitution.

The original act was unconstitutional. The present resolution even more so, if possible.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL INCREASING SALARY POLICE JUDGE, LEXINGTON.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
March 16, 1898.

I decline to approve Senate Bill No. 56, being "An act to amend and re-enact an act, approved March 19, 1894, governing cities of the second class."

The purpose of this bill is to declare the "intention" of section 1, article 6 of the act named, and to "remove such doubt," etc.

A glance at the section will show that there can be no doubt concerning the intention of the act. Even admitting, for argument's sake, that the Legislature has the right to construe its own acts, or to remove doubts, such right can not be exercised when the statute attempted to be construed is plain.

If the police judge's salary is not sufficient that matter might have been remedied, as to the present incumbent, by the action of the city council, preceding his election, by an ordinance having reference to the salary of the incoming judge.

The language of the act attempted to be amended is plain: "Who shall receive for his services such salary as the general council shall fix by ordinance; and said judge shall not receive any other compensation from any source."

The effect of the bill would be to change the salary of the present incumbent "after his election or appointment," which is prohibited by section 16 of the State Constitution.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO BILL LEGALIZING ELECTIONS IN CERTAIN GRADED SCHOOL DISTRICTS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
March 16, 1898.

I decline to approve House Bill No. 191, being "An act to legalize elections in certain graded common school districts in this Commonwealth," for the following reasons:

In the first place, it is essentially special and local in its character, and, therefore, in conflict with section 59 of the Constitution.

Second, While as to the money expended, it might be retrospective, of which however there is some doubt, it certainly can not be made to apply as against those persons who refuse to pay taxes assessed. The Legislature can not deprive them of any right they now have, and has no authority to exercise judicial powers. See Allison, etc., v. Louisville, Harrods Creek and Westport Railway Company, 9 Bush, 255; Gaines v. Gaines, etc., 9 Ben Monroe, 301.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO BILL REGULATING FIRE INSURANCE COMPANIES.

March 16, 1898.
EXECUTIVE DEPARTMENT,
COMMONWEALTH OF KENTUCKY,

House Bill No. 1, entitled "An act to regulate fire insurance companies and their agents, authorized to do business in Kentucky, and providing penalties for violation of the provisions of this act," in my judgment should not become a law.

By its provisions, all insurance is confined to agents of insurance companies, whose bona fide residence and principal place of business is in this State.

The bill, therefore, places the citizens of Kentucky entirely under the control of the local board of underwriters and is unconstitutional.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO BILL PROVIDING FREE TRANSPORTATION OF BICYCLES OVER THE RAILRAODS OF THIS COMMONWEALTH.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
March 16, 1898.

House Bill No. 55, entitled "An act providing for the transportation of bicycles as baggage by all railroads operating in the Commonwealth of Kentucky," compels the roads to transport bicycles as baggage, free.

If the Legislature has the power to do this, it has the power to compel the roads, free of charge, to transport the horse or carriage, or both, of a passenger, without cost; indeed, to compel the railroad to carry free anything that its whims suggest.

Said the Supreme Court of the United States, in Railroad Commission Cases, 116 U. S., S. C. R.: "The power to regulate is not a power to destroy and limitation is not the equivalent of confiscation. Under pretense of regulating fares and freights, the State can not require a railroad corporation to carry persons or property without reward."

This principle was re-iterated in Regan v. Farmers' Loan, etc., 154 U. S. S. C. R., 398.

For the reasons given, I refuse to approve the bill.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO BILL CHANGING METHOD OF ASSESSING WHISKEY.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
March 16, 1898.

I will not approve House Bill No. 197, being "An act to amend and re-enact section 4, article 5 of an act, entitled 'An act relating to revenue and taxation,' approved November 11, 1892, and being section 4180 of Kentucky Statutes."

The present law fully accomplishes uniform valuation and under its provisions there has been a very considerable increase of revenue. The counties are as much entitled to the benefits of the present law as the State.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO BILL ALLOWING APPEALS IN PROCEEDINGS FOR HABEAS CORPUS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 16, 1898.

In my judgment House Bill No. 218, entitled "An act to provide for an appeal in actions of *habeas corpus*," should not become a law.

In the first place, the experience of more than a century does not demonstrate its necessity.

In the second place, the docket of the Court of Appeals is so large that it has become necessary by act of the present session, to increase the minimum sum as to jurisdiction, and furnish clerical aid for some time to come.

In the third place, the Constitution and laws of the State already give the citizen ample protection.

I therefore decline to approve the bill.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO BILL PROVIDING FOR BY-STANDERS AS JURYMEN.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 16, 1898.

I will not approve House Bill No. 64, being "An act to amend an act, approved March 29, 1882, chapter 62, article 4, section 12, General Statutes."

The object of that act was to cripple, as much as possible, the avocation of the professional juror, who for so many years has infested the court houses.

Besides, a bystander can not claim that he has been summoned away from his home, compelled to attend court, and should, therefore, be paid for one day's service.

The expense of juries is a serious drain on the treasury as it is, and if this bill were allowed to become a law, would be increased.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO BILL POSTPONING PAYMENT OF SALARIES COMMON SCHOOL TEACHERS AND OTHER STATE CREDITORS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 16, 1898.

I will not approve House Bill No. 284, entitled, "An act to amend an act entitled 'An act relating to revenue and taxation, approved November 11, 1892 (as amended March 7, 1894)."

The bill requires, that all taxes shall be due and payable on and after the first day of March after the assessment, and then compels the sheriff or collector to report on the first day of May, July, September, November, December, January and February the amount of taxes he has collected and pay the same immediately, and to account for and pay all taxes into the treasury on the first day of March in each year.

As the law now stands, all taxes are due on the first day of March after assessment, and the sheriff or collector is required to account for and pay them into the treasury on the first day of December in each year.

The payment by that date is absolutely necessary to carry on the schools and other governmental departments. The present bill gives the sheriff until the first day of March after the taxes become due to account for and pay them into the treasury, a period of one year, and instead of confining all his reports to not later than December, allows him to report in January and February of the year succeeding that in which the taxes become due.

If this bill were to go into effect it would postpone the payment to school teachers and other creditors of the State, thereby entailing hardship and loss.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL AMENDING AND CHANGING LAW ENTITLED "GUARDIAN AND WARD."

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 16, 1898.

I decline to approve House Bill 476, being "An act to repeal section 12, article 1, chapter 4, General Statutes, section 2025, Kentucky Statutes," entitled "Guardian and Ward."

Section 12, article 1, chapter 4 of the General Statutes, relates to asylums for the deaf and dumb.

Section 2025 of the Kentucky Statutes relates to the subject of guardian and ward.

It will be observed that the body of the bill assumes to repeal section 12, article 1, chapter 48 of the General Statutes. The title relates to two different subjects. If the body of the act is to control, then it is in conflict with the title, so that in either state of case the bill can not become a law by reason of the requirements of section 51 of the Constitution.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL FOR THE BENEFIT OF CERTAIN SHERIFFS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1898.

I decline to approve Senate Bill No. 97, entitled "An act for the benefit of sheriffs of this Commonwealth."

Section 59 of the Constitution, taken in connection with subdivision 15 thereof, prohibits the passage of any special act "to authorize or to regulate the levy, assessment or collection of taxes."

The purpose of the bill, plainly expressed, is to enable a portion of the sheriffs of the State to collect taxes, by granting them an extension of two years, "in which distraint may be made."

It will be observed that the bill is not for the benefit of all the sheriffs of the State, but only a portion of them. The remedy might have been accomplished by the passage of a general law, giving such authority to all the sheriffs of the State, and for this reason the bill is unconstitutional, subdivision 29, of the same section, prohibiting the passage of any special act when a general law can be made applicable.

So anxious were the makers of the Constitution to prohibit special or local legislation, which at the time of the formation of the present Constitution had grown into a crying evil, that they enacted a section with twenty-nine subdivisions to prevent it.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL FOR THE BENEFIT OF DRIFT CATCHERS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1898.

I will not approve House Bill No. 140, being "An act to amend and re-enact section 1, article 2, chapter 3, General Statutes, relating to drifts, logs and timber."

The bill makes applicable the former law, in some respects changed, to all the rivers in the Commonwealth. There are many rivers in the State where the owners of logs mark them and float them separately to market. This bill allows these logs to be taken up and sold to pay the charges, when the owners do not desire that such should be done, and in this way the owners is compelled to pay tribute to the drift catcher.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL RELATING TO DENENSES AS TO BONDS CITIES FIRST CLASS.

EXECUTIVE DEPARTMENT,
COMMONWEALTH OF KENTUCKY,
Frankfort, March 17, 1898.

House Bill No. 356, entitled "An act to amend and re-enact an act entitled, 'An act for the government of cities of the first class,' approved July 1, 1893, and to repeal section 76 of said act," is not approved.

The bill provides, among many other objectionable things, that, "After the issue of the bonds, no suit shall lie to enjoin the collection of any such installment assessment and the validity of same shall not be questioned, but all property owners shall be conclusively estopped and precluded from, in any manner, assailing the effectiveness or validity of such assessments."

Although the name of the debtor may have been forged, although he may have been imposed upon, misled or defrauded, his mouth is closed, and an attempt made to deprive him of his right to invoke the protection of the courts, guaranteed by section 14 of the Constitution.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL TRANSFERING APPOINTMENT OF POLICE FROM EXECUTIVE TO JUDICIAL DEPARTMENT.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1898.

I decline to approve House Bill No. 434, being "An act to provide for county police in certain counties."

The bill is unconstitutional because, it undertakes to deprive the executive department of cities, above the first class, of the right to appoint police commissioners, or to control the appointment of members of the police force.

This is essentially an executive or ministerial power, which can not be conferred on the judiciary. Sections 27 and 28, Constitution.)

Second.—It is unconstitutional because, in counties where there are three cities, which are in one or the other grade of cities above those of the fifth class, the law made applicable for their regulation is directly contrary to the law made for the regulation of each of the classes named under their separate heads, in other portions of the State.

So that, a fourth class city in such a county would be governed by different rules from another fourth class city of another county, except one in counties where there are three cities of the class named. The same may be said of first, second, and third class cities.

The cities in this Commonwealth are divided into six classes, and the Legislature has no power to adopt for any city in any of these classes a law which does not apply to all cities of a similar character in the same class in other portions of the State.

The bill is also unconstitutional in giving to the board of police commissioners, appointed by the judge, the right to fix salaries of the police department for the reason as above indicated.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL PERMITTING SEPARATE ELECTIONS IN UNREGISTERED TOWNS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1898.

I will not approve House Bill No. 126, being "An act to allow towns where no registration is required to hold separate elections."

The bill provides that in cities and towns where no registration is required, municipal elections shall be held separate and apart from State elections, by officers to be appointed by the city council or board of trustees."

Section 148, Constitution, declares—"Not more than one election each year shall be held in this State, or in any city, town, district or county." . . . "All elections of State, county, city, town or district officers shall be held on the first Tuesday after the first Monday in November."

Section 167 provides, "All city and town officers in this State shall be elected or appointed as provided in the charter of each respective town and city, until the general election in November, 1893, and until their successors shall be elected and qualified, at which time the terms of all such officers shall expire; and at that election and thereafter as their terms of office may expire, all officers required to be elected in cities and towns by this Constitution, or by general law in conformity to its provisions, shall be elected at the general election in November."

The two sections make it perfectly clear that there can be but one election, and that all the officers named must be elected, not only on that day, but at that election.

The Legislature that enacted laws to carry out the constitutional mandate so construed the Constitution, and I have no doubt its construction was correct.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO BILL BENEFIT KENTUCKY DENTAL ASSOCIATION.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1898.

I decline to approve House Bill No. 93, entitled, "An act continuing the Kentucky State Dental Association and regulating the practice of dentistry in this Commonwealth," for the following reasons:

The association named is a private corporation, clothed with the usual power granted in such cases, and was created by Act of Assembly, February 18, 1870.

The act gave it the power to prescribe terms for the admission of members to its corporate body.

Now, it will be observed that this is simply a corporation, in no wise connected with the State government, belonging to no branch of it and not under the control of any department. April 8, 1888, an act was passed by which it was undertaken to confer upon this corporation powers of government enabling it to regulate the practice of dentistry in Kentucky. General Statutes, 477.

May 10, 1886, another amendment was enacted, to amend the charter granting still broader power of control over the general public. General Statutes, 479.

May 1, 1893, another act was passed, by which the association was continued, when no such act was necessary, and again broadening its powers.

The present bill undertakes to incorporate the principles of the others, still enlarging and strengthening its powers, until now we have presented the anomaly of a private corporation, with no responsibility to the State, armed and equipped with powers which hold in control the destiny of every citizen who undertakes the practice of dentistry in Kentucky, with power to make every applicant to whom a license is granted pay ten dollars for the examination, five dollars more for a license and fifty cents more to have it recorded.

Nor is this all. After having paid fifteen dollars for these privileges, if the dentist offers to do business before his license is recorded, he

forfeits and pays the further sum of twenty-five dollars, not to the State, not to the common school fund, but to the association.

In addition to this, the bill requires that five examiners shall be elected by the association, (no dentist, however, whatever may be his accomplishments or capability, who is not a member standing within the charmed circle of the association, to be eligible) upon whom is to be devolved the power of examination of all applicants. Not even a diploma from a reputable college can authorize one to practice, unless the board shall consider it sufficient evidence that the person presenting it possesses sufficient knowledge and skill. In other words every college of the land must stand uncovered in the presence of this august body.

And when it refuses to allow a license the only appeal is to the president of the State Board of Health.

So it is, the citizen is under control of a board appointed without constitutional authority, vacancies upon which may be filled by the president of the association (without constitutional authority) with no appeal to any head of department, much less a court.

Unlike the Board of Health, it is a private institution with general powers, its board appointed by itself and holding in the hollow of its hand the liberty of the citizen.

I agree that quakery and empiricism should be suppressed; but it should be done in a constitutional and just manner, and not be left to the control of a private corporation, whose coffers are to be filled at public expense.

The bill is in conflict with sections 27 and 28 of the State Constitution, being an attempt upon the part of the Legislature to assume executive or ministerial powers. It violates the Constitution by an attempt to confer power upon another than the executive to supply vacancies in a State office. (Section 152.)

It places the liberty of a citizen under the absolute and arbitrary power of an unauthorized body, without affording any such investigation as he is entitled to. (Section 2, Constitution.)

In addition to the objections stated, the bill is in direct conflict with sub-division 17, of section 59 of the Constitution, which possitively prohibits the General Assembly from amending the charter of any corporation in existence at the time of the adoption of the Constitution.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO OF BILL FOR PROTECTION OF LESSEES, PURCHASERS, ETC.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1898.

House Bill No. 2, being "An act to amend sections one and two of an act approved March 17, 1896, entitled 'An act for the protection of purchasers, lessees and incumbrancers of real estate,' is not approved. The bill establishes certain rules, requiring certain notice, in certain cases, and concerning executions, attachments, etc., to be filed for the protection of purchasers, lessees and incumbrancers of real estate in counties having a population of seventy-five thousand or over. By its provisions the present law which is applicable to the whole State, is repealed, so that such notices are not required except in Jefferson county, as that is the only county in the State having the population named.

The cities of the State are placed in different classes, and charters of different character are provided for them under the provisions of the Constitution. The counties, however, occupy an entirely different attitude, and laws governing them must be of a general character, applicable alike to all.

Section 59 of the Constitution declares, the General Assembly shall not pass local or special acts concerning any of the subjects mentioned in the subdivisions thereof. Subdivision 22 of that section prohibits the passage of any law "to authorize the creation, extension, enforcement, impairment or release of liens."

The bill not only impairs, but absolutely destroys any lien on real estate any party may have as to any subsequent purchaser, lessee or incumbrancer, unless certain notice is given.

Not only so, but it provides for the "enforcement of liens" under certain proceedings.

Again, subdivision 29 forbids the enactment of any special or local law where a general law can be made applicable.

It can not be doubted that a general law could be framed to cover the points embraced in this bill, applicable to the whole State.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL AMENDING ACT CONCERNING PRIVATE CORPORATIONS—INSURANCE.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 17, 1898.

Senate Bill No. 176, being "An act to amend an act entitled 'An act providing for the creation and regulation of private corporations,' which became a law April 5th, 1894, is not approved.

The purpose of that act in conferring power upon individuals to associate themselves together in a corporate capacity to engage in the business of insurance in this State, was on the one hand to grant them privileges, and on the other to secure the people of the State.

The failure of these companies in the past, and the loss thereby entailed on citizens of the Commonwealth, was doubtless in the mind of the legislature when that act was framed.

In order to guard against loss, section 88 of the act, among other cautionary provisions, required that the "capital stock and accumulations of all insurance corporations may be invested in bonds and mortgages, lien notes or deeds of trust, or unencumbered real estate within the State of Kentucky."

The present bill eliminates from the act the words, "within the State of Kentucky." The evident intention of the legislature in passing the original act was, among other things, to confine the real estate to this Commonwealth, so that in case of assignment, etc., the persons affected could have ready access to the property in order to recompense themselves, partially or otherwise.

In another portion of the same section, for the purpose of protecting the creditors of the company from loss, while the company was given the right to make loans and to change and re-invest its securities, it was provided—"but the current market value of such bonds and stocks, or other evidence of indebtedness, except United States Government securities, shall at all times, during the continuance of such loans, be at least twenty per cent. more than the sum loaned thereon."

The present bill eliminates this important provision from the act.

In addition, the law sought to be amended provided, "that the capital stock and accumulations of the companies might be invested in stocks of incorporated banks and trust companies of this State, and of national banks of this State or 'adjacent States.'" The bill strikes

out the word "adjacent," and substitutes the word "other", so as to apply to any or all of the States of the Union.

The bill, it will be observed, does not propose in its amendatory clause to strike out the one and insert the other word, but in stating what the law is, as amended, after striking out other portions provided for specifically, omits the one and inserts the other word.

The section therefore as enacted is not in conformity to the amendments proposed.

The whole bill is calculated to deprive those who are, or may become interested on account of insurance; or those who are, or may become creditors of such companies, of the safe-guards provided by the old law.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

VETO OF BILL PROVIDING FOR CREATION AND GOVERNMENT OF SUBURBAN DISTRICTS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 18, 1898.

I will not approve House Bill No. 248, being "An act to provide for the creation and government of suburban districts."

Section 59 of the Constitution and its twenty-ninth subdivision prohibit the passage of any special or local legislation where a general law can be made applicable. The object of this section and subdivision was to prevent the time of the Legislature from being consumed in the consideration of frivolous subjects.

The act of 1893, entitled "An act for the creation and regulation of towns in this Commonwealth," and the amendment thereto, approved March 15, 1894, gives full power to the circuit court to incorporate towns where there are as many as one hundred and twenty-five inhabitants in a quarter of a square mile. The power is given in addition, to the court, under proper state of case made out, after incorporation, to extend the limits. Under this law all relief can be had which this special and local act attempts to give.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL INCREASING FEES OF COMMISSIONERS AND RECEIVERS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 18, 1898.

I can not approve House Bill No. 296, being "An act, to amend an act, entitled, an act relating to fees, approved June 15, 1893 (being chapter 47, Kentucky Statutes.)"

By section 38 of the act attempted to be amended, the clerks of the circuit and county courts, commissioners, receivers and sheriffs of each county having a population of 75,000 or over, are required on the first day of each month, severally, to send to the Auditor of Public Accounts a sworn statement, showing the amount of money collected and received by each of them the preceding month, for fees and compensation, together with the money so collected or received.

Section 41 provides, that the salary of each of the officers named shall be paid monthly by the treasurer upon the warrant of the auditor; and if 75 per cent. of the amount paid into the State Treasury in any month is not sufficient to pay the salaries and expenses for that month, the deficit may be made up out of amount paid in any succeeding month, but in no event can the auditor pay any of the officers more than 75 per cent. of the amount so paid in.

Under the operation of the statute named, in 1897, the State of Kentucky retained of the amount paid in nearly $5,000, paying the residue to the officers named: to the commissioner and his deputies, $13,294.21 and to the receiver, $2,958. It is true that the full salaries established were not paid, but they were to be paid on condition that 75 per cent. of the amounts collected should be sufficient for that purpose.

The present bill, if it becomes a law, and the amounts paid in this year to the auditor should be the same, will add to the salaries of the two officers named the sum of $4,654.87 and decrease the amount paid into the treasury from $4,717.60 to $62.73.

The bill is applicable to the present incumbents, for it strikes from the statute the words "after the terms of the present incumbents shall respectively expire." Connecting this with the fact that the bill will increase the salaries of the officers named after they have

been appointed and during their term of office, it is manifestly in direct conflict with section 161 of the Constitution, which explicitly declares that "the compensation of any city, county, town or municipal officer shall not be changed after his election or appointment, or during his term of office."

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL MAKING GOLD AND SILVER LEGAL TENDER AND PROHIBITING CERTAIN CONTRACTS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 18, 1898.

I will not approve House Bill No. 212, being "An act entitled an act to make gold and silver coin of the United States a legal tender in the payment of all debts, and to prohibit the making of any contract for the payment of money in any other currency than the general legal tender of the United States."

By the act of February 28, 1878, the Congress of the United States provided, that silver dollars should be a legal tender at their nominal value for all debts and dues, public and private, except when otherwise expressly stipulated in the contract.

By subsection 5, section 8, article 1, Constitution of the United States, Congress has the exclusive power "to coin money and regulate the value thereof."

The Legislature has no power to enact a measure establishing a different standard to that fixed by Congress.

Nor, has the Legislature of Kentucky any more right, under existing law, to say that a citizen may not fix by contract the character of money with which an indebtedness is to be paid, than it has to require that he shall not provide by contract that a debt is to be paid in cattle, sheep, or any other commodity or merchandise.

It has been held, that a bill which undertakes to abridge the right of contract between parties in regard to matters personal to themselves, and to deprive them of the power to fix the mode of compensation, is clearly unconstitutional. State v. Goodwill, 33 W. Va., 179; Mettell v. The People, 117 Illinois, 204; Walley's Heirs v.

Kennedy, 2 Yerger, 554; Godcharles & Co. v. Wigeman, 113 Penn., 431; House Bill 203, Vol. 21, Colorado Rep., p. 28.

In Low v. Rees Printing Co., 41 Nebraska, 146, it is held, citing numerous authorities, that the right to control necessarily includes the right to fix the price at which labor will be performed and the mode and time of payment. Each is an essential element of the right to contract."

The act invades the liberty of the citizen and arrogates to the Legislature the power to control arbitrarily the rights guaranteed to him by the fundamental law.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL FOR BENEFIT OF INCORPORATED DISTRICTS AND OTHER LOCALITIES.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 18, 1898.

I will not approve House Bill No. 234, being "An act for the benefit of incorporated districts or other municipalities not heretofore assigned to any class of cities or towns."

Section 59 of the Constitution and its 29th subdivision prohibits the passage of any special or local legislation where a general law can be made applicable. The object of this section and subdivision was to prevent the time of the Legislature from being consumed in the consideration of trivial subjects.

The act of 1893, entitled "An act for the creation and organization of towns of this Commonwealth," and the amendment thereto approved March 15, 1894, gives full power to the circuit court to incorporate towns where there are as many as one hundred and twenty-five inhabitants in a quarter of a square mile. The power is given, in addition, to the court, under proper state of case made out, after incorporation, to extend the limits. Under this law all relief can be had which this special and local act attempts to give.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL CREATING BOARD OF FIREMAN'S PENSION FUND.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT.
Frankfort, March 19, 1898.

I will not approve Senate Bill No. 20, being "An act to create a Board of the Fireman's Pension Fund, to provide and distribute such fund for the pensioning of disabled firemen and the wives and children of deceased firemen, to authorize the retirement from service and pensioning of members of the fire department, and for other purposes connected therewith in cities having a population of over fifty thousand inhabitants, and a paid fire department."

I dislike very much to veto a bill, the object of which is so laudable and proper. In compliance with duty, however, I can not approve any measure which I believe to be unconstitutional.

In the first place, mutual benefit companies, or companies having in view the objects set out in this bill, may be organized under the general law. This being the case, a special act is forbidden. See section 59 (Constitution) and subsection 29 of same.

In the second place, the bill provides that the proceeds of the sale of condemned horses may be paid into this fund. This money, as the law stands, goes to the credit of the fire department, and the money thus derived is used to make it effectual. If it is taken and placed in a pension fund it must be supplied by taxation on the people of the city. In other words, the people can not be forced indirectly to contribute to the fund attempted to be raised by this bill.

In the third place, the salary forfeited by any member of the department for neglect of duty, etc., belongs to the city, and may be used for the employment of a substitute, or if not so used, lapses into the common fund. The bill appropriates this sum to the pension fund, and this can not be done and the people forced by taxation to contribute to a private corporation.

In the fourth place, the board is given the right to say whether any gift made to any member of the fire department by reason of gallant and distinguished service shall go to the general fund, and in this and other respects, its decision is declared to be final. I do not think that any man should be thus deprived of his property without due process of law.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL REGARDING HAWESVILLE SCHOOL BUILDING.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 19, 1898.

I will not approve House Bill No. 454, being "An act to repeal an act entitled an act to provide for the erection of school buildings in common school district No. 1 in the town of Hawesville," approved March 28, 1873.

For nearly a quarter of a century a school has been maintained under that act which has been of great benefit to the people of that district. By combining the common school tax with other money, for some time the people have maintained an excellent school. Indebtedness of $10,000 was contracted, only $5,000 of which now remains to be paid, and this is bearing only 5 per cent. interest.

Upon the faith of that act considerable money has been invested and that investment would be rendered valueless if this bill should become a law.

The supplemental taxing power of the old act being destroyed, the people will be given in place of the institution named, a common school lasting only five months in the year, instead of one now taught from seven to eight months in the year.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL RELIEVING NEWSPAPERS FROM EFFECT OF CORPORATION LAW.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 19, 1898.

Senate bill No. 152, being "An act to amend and re-enact section 10 of article 1 of an act entitled, an act providing for the creation and regulation of private corporations," which became a law April 5, 1893, is not approved for the following reasons.

The section amended is obscure and uncertain. From its plain verbiage it may be construed as meaning that all corporations are alike responsible, for there is no exception; or, it may be construed to mean that those companies specifically mentioned are to be subjected to greater burdens than other corporations. It is plainly open to both these constructions, if the words are to be literally construed.

However, as the corporations especially named and described are each engaged in the performance of a public duty, in which the public has an interest, and which, while they are organized for individual gain, result in the public gain also, it may be said that the law makers intended to favor them, and that they alone are not subject to the double liability.

These corporations may be operated at a loss to the stockholders, and yet the public receive a benefit. Besides, such corporations are carefully regulated by law in every way. Not so with the newspaper corporation. Its regulations are but few, and of slight consequence comparatively speaking. Besides, experience proves that they are the most ephemeral of corporations, the most uncertain in duration. They are frequently organized to give publication to the ideas of new parties, which like visions, soon fade away. Whenever they cease to be profitable to the stockholders, they go to pieces. They are established for private rather than public gain.

The stockholders in every newspaper now organized in Kentucky are responsible under the double liability clause.

Is it just, fair, reasonable or constitutional that those which are to be organized hereafter should be placed upon a more favorable footing? If so, why should not the stockholders in banks hereafter to be organized, which in a limited sense are public institutions necessary for the public, be relieved from double liability?

If this bill should become a law, we would have presented the

anomaly of two corporations of the same character and class governed by entirely different laws. The Constitution does not authorize this granting of special privileges to one of a class as against others of the same class. No law could be enacted by which newspapers already organized could be given the benefits of this bill, for such a law would be an impairment of contracts. As no such general law could be framed, it follows that no special law could be enacted making such an unwarranted distinction.

I seriously doubt the constitutionality of section 10, as it stands, if the liberal construction is to be given that it confers privileges upon certain classes as against others, and can not approve a bill which, in my judgment, goes far beyond it and is clearly unconstitutional. The newspapers of the State should all be governed by the same law, and their stockholders subject to the same liability.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL MAINTAINING CIRCUIT COURTS AND OFFICES.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 19, 1898.

House Bill No. 204, being "An act to provide for maintaining circuit courts and their offices, and furnishing services and assistances to courts by cities of the second class in this Commonwealth wherein sit circuit courts of continuous session," is not approved.

Owing to the unfortunate condition of affairs prevailing in Covington, I have tried to reconcile the objections to the bill in such a way as to at least allow it to become a law without approval. But a careful examination of the bill does not authorize such action on my part.

Waiving the minor questions as to the special character of the act and others of even smaller consequence, I can not give assent to the exercise of the unlimited, unauthorized and unconstitutional powers conferred upon the judge, and the taking of those powers from the department of government in which they are lodged by the Constitution.

Had the Legislature gone no further than to require the city "to maintain the court and court room and the offices of its officers

and furnish the same, and pay for such services or assistance as may in the discretion of the judge of such courts be necessary for the proper conduct of such courts," all doubts might have been solved in favor of the bill, or at any rate all such doubts put at rest so that it might become a law without approval. Surely no more should have been required, because, if constitutional, the judge could have enforced the provisions by proper process.

But after having required the city to do these things, the bill goes further and confers upon the judge of the court substantially the right to do all the city is required to do, giving to it only the right and duty of paying the bills contracted by him.

Section 2 reads: "The judge of such court may purchase in the manner he deems best, furniture or other things in his discretion necessary to carry out the provisions of section 1 hereof; and the said city shall, upon the order of the judge or of the courts, allow and pay the claims so created, and the judge of such court may cause to be rendered in the conduct of such courts such services or assistance as he may deem necessary, and the said city shall upon the order of said judge of the court allow and pay the claim so created."

No such power as this has ever been conferred before on any judge of this Commonwealth. Judges, it is true, have the inherent power to maintain their dignity and enforce their commands, but must accomplish these things through the properly authorized agencies set apart by law.

But to confer upon them powers fixed elsewhere, to allow them, in their discretion, without limit, to thus fix an indebtedness upon the city, without consulting with its constituted authorities is the grant of dangerous powers which I can not approve.

Section 157 of the Constitution limits the tax rate for all towns, and prohibits any one of them from becoming indebted to an amount exceeding in any one year the income and revenue provided for such year without the assent of two-thirds of the voters voting at an election held for that purpose; and further provides, that any indebtedness contracted in violation of the section shall be void, etc.

Section 156 of the Constitution requires the Legislature to divide the cities of the State into classes and provide for the organization and powers of each class by general laws.

In conformity to this command the cities of the State were classified and laws enacted for their government.

The power was conferred on the city council, in cities of the second

class, to appropriate money and provide for the debts and expenses of the city, and levy and collect taxes.

In the discharge of this duty, by reason of its knowledge of the wants of and demands against the city, the council may, without difficulty, keep within the constitutional limits of taxation. But if this power is to be subdivided and lodged in contending and warring departments of government, the whole basis and theory of liability and taxation will be inevitably thrown into inextricable confusion and doubt.

The circuit judge is not a municipal or city officer. His powers are purely judicial. He may by proper process enforce the orders of his court, its decorum and government, but he can not be made a purchasing agent, much less a purchasing master for the city.

The powers attempted to be conferred on the judge in the second section of the act form no part of the judicial department, and he can not exercise them.

To allow the circuit judge in his discretion to make these purchases might lead to embarrassment, for if he should purchase furniture, safes, etc., he might saddle upon the city a debt which under constitutional limitations could not be paid.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF BILL AMENDING COMMON SCHOOL LAW.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 19, 1898.

I will not approve House Bill No. 122, being "An act to amend an act entitled, an act to provide for an efficient system of common schools throughout the State," approved July 6, 1893.

The bill, taken in connection with the other sections of the law, compels the teachers of each common school to contribute to the expenses of the institutes and to attend the same, although their schools may be in session and at the same time deprives them of any compensation.

Such a law is manifestly unjust and operates as a punishment upon the teachers who are not paid, at best, a sum commensurate with their services.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

VETO OF FELLOW SERVANTS BILL.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,
Frankfort, March 21, 1898.

I decline to approve Senate Bill No. 61, being "An act concerning the liability of the owners, possessors, or operators of railways for the negligence and wrongful acts of servants and fellow servants."

That the Legislature has the right to enact laws affecting the negligence of railroads, not applicable to other corporations, can not be doubted. See Schoolcraft v. L. & N. R. R. Co., 92 Kentucky, 223; Missouri Railway Co. v. Mackey, 127 U. S., 205.

Neither can the power of the Legislature be doubted to establish and define the character of negligence for which recoveries may be had and the persons by grade or otherwise who may maintain actions; unless, there is some limitation on that power contained in the Constitution.

The Governor may interpose a veto where he believes a bill will prove injurious or hurtful to the State, although it may not be unconstitutional; but he has no power to question the policy or impolicy of the Constitution, for that is the supreme law of the land.

When the Constitution confers a special power upon any department of government, rather than leaving it free to exercise a general power, while everything necessary to the exercise of the power conferred is implied, it can not be extended or curtailed in its scope or operation.

That the Legislature has the general authority in the absence of express direction by the Constitution to legislate concerning the matters alluded to, there can be no question; but that when it is confined within the limits of a special constitutional direction, it can not transcend those limits, there is little doubt.

The bill is drawn under the provisions of section 241 of the Constitution. The debates show that one purpose of that section was to remedy a difficulty growing out of the opinions of the Court of Appeals, which denied the right to maintain any action for damages where death ensued in certain states of case. Debates Constitutional Convention, Vol. 4, pages 5749, 5750 and 5751.

It appears also, at page 5752, that the distinguished author of the present bill stated, that the object of that section was "to prevent

the Legislature from saying that the recovery shall be confined to servants of corporations and unequivocally to impose the liability on both corporation and servant, and then either or both may be sued, and also to authorize suits for death to be maintained under the section as it now stands in the Constitution."

Such debates are not conclusive as to what the intention of the Constitution is, they are merely persuasive. Nor does it follow, that there may not have been an intention which is not manifested in the debates, for frequently discussion is not indulged as to all the purposes of a given section. But as said by the Court of Appeals in Wright v. Wood's Admr., 96 Ky., 62, "The former constitution contained no provision in terms authorizing such statutory enactments, nor was it necessary there should have been in order to make the three statutes referred to valid; but the General Assembly refused to enlarge the scope of either, and it is therefore plain that the only object of section 241 was to authorize recovery of damages for destruction of human life in cases and for the benefit of classes of persons, where the General Assembly, even if possessing the constitutional power, had not, nor probably would, make statutory provision."

That the makers of the Constitution intended to give an additional remedy and one far more comprehensive than those embraced in the statutes, can not be doubted.

The section is as follows: "Whenever the death of any person shall result from an injury inflicted by negligence or wrongful act, then in every such case, damages may be recovered for such death from the corporations and persons so causing the same."

It will be observed that damages are recoverable "in every such case," which seems clearly to ignore the rule of *respondeat superior* prevailing in this State at the time of the adoption of the Constitution.

As to whether the portion of the section quoted is self executing it is not necessary to determine, for if self executing no statute is necessary, and if not self executing no statute in conflict with it can be enforced.

The bill must be construed in the light of section 241, for that section having declared that a certain liability should attach in a certain state of case to persons fixed and ascertained, the legislative power can not add to or subtract from its provisions, but must be confined strictly to the rules announced.

It will be observed in the first place, that while the person in-

jured has a cause of action, it is joint against the "corporations and persons" inflicting the injury. Had the disjunctive conjunction been used, it might be assumed that the action could be maintained against either the corporations or the persons, but the employment of the copulative conjunction, and especially when taken in connection with the purpose of the section as explained by the author of the bill on the floor of the convention, is conclusive that the cause of action is joint and not several. Notwithstanding this, the bill confines the recovery to the corporations alone.

In the second place, it will be seen, that while the extraordinary remedy allowed by section 241, was confined to injuries resulting in death, the highest degree of injury, the bill extends it to injuries which do not result in death.

The makers of the Constitution evidently thought that a more comprehensive and severe rule should be adopted for the punishment of railroad corporations and persons that by negligence or wrongful act inflicted injuries which resulted in death; but they did not believe that the same rule should apply to other injuries.

It is manifest, that the General Assembly in passing this bill, in one respect curtailed the organic law by relieving persons who are responsible under its provisions, and in another added to its severity by fixing the sole responsibility upon the corporations, and making the corporations responsible for a class of injuries for which they are not responsible under the provisions of the Constitution.

For these reasons, the bill is unconstitutional. See Cooley's Constitutional Limitations, pages 78 and 105. Page v. Allen, 58 Penn. St., 328; State v. Taylor, 15 Ohio State, 137.

(Signed) WILLIAM O. BRADLEY,

Governor of Kentucky.

LABOR DAY PROCLAMATION.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,

In conformity to the Statutes of the United States and of this State, September the 5th is set apart as a legal holiday, and designated "Labor Day."

This is a suitable and just recognition of those who, in workshop, field and elsewhere have contributed so much to build up the material resources of the country and dignify manual labor.

It is recommended that all places of business be closed on that day, and that employers excuse as many of their laborers as they can consistently, so that the sons of toil may congregate in large numbers and enjoy the holiday set apart by State and national statutes for their benefit.

This August 31, 1898.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

CHICKAMAUGA MONUMENT DEDICATION PROCLAMATION.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,

On the 25th day of this month the Kentucky monument will be dedicated at Chickamauga Park. It is erected by legislative authority in common honor of the Kentucky Union and Confederate soldiers, living and dead, who more than a third of a century ago contended with each other on that bloody field, and by their bravery and heroism reflected undying credit on their native State.

In no other battle during the Civil War were engaged so many soldiers from this State. Such an occasion will never again be presented, for never will our people engage in such a conflict, and after it has ceased, forgetful of all save its glories, which are our common heritage, meet to pay equal tribute to contending factions. Love and reverence for the dead, respect and admiration for the living, alike demand that this dedication, in point of numbers, respectability and fervid patriotism, should be such as will be creditable to the State, draw the people more closely together in the bonds of brotherly love, and prove an inspiration to future generations.

For the accomplishment of these noble purposes, the various societies and orders throughout the Commonwealth are requested to send representative uniformed bodies, and the citizens generally are most earnestly invited to attend.

Done at Frankfort on the 4th day of November, A. D. eighteen hundred and ninety-eight, and the one hundred and seventh year of the Commonwealth.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

THANKSGIVING PROCLAMATION.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,

Thursday, the 25th day of November next, is hereby set apart as a day of thanksgiving and prayer.

Given under my hand and seal of office, October 31, 1898, and the 107th year of the Commonwealth.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

DECORATION DAY PROCLAMATION.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT,

The beautiful and appropriate custom of decorating with flowers the graves of the Union dead on the 30th day of May in each year, and holding fitting memorial services, has for some years been recognized by law, in that the same has been made a National and State holiday.

As the 30th of May falls on Sunday in the present year, such services will be held on the 31st of this month.

I most earnestly request that the public business be suspended, the children dismissed from school and as many persons attend as can do so, not only to honor the memory of the brave men who died to preserve the Union, but to cultivate kind and brotherly affection with those who fought in the armies of the Confederacy. Let it be a day when all political differences are cast aside, and when good feeling may be entertained by all the citizens of the Commonwealth for each other regardless of the animosities of the past.

Given under my hand this May 25, 1897.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

PROCLAMATION IN BEHALF OF FAMILIES OF SOLDIERS.

COMMONWEALTH OF KENTUCKY,
EXECUTIVE DEPARTMENT.
Frankfort, June 20, 1898.

To the People of Kentucky:

While your brave sons have gone and are going to the front, at the risk of health and life, to defend the honor of the flag, avenge the murder of their brethren, and assist the down-trodden and oppressed, it should not be forgotten, that in many instances they have left families behind them who need and deserve your attention.

It is suggested that organizations be formed in each county of the State, for the purpose of looking after the loved ones of the absent soldiers, and that immediate steps should be taken in this matter.

(Signed) WILLIAM O. BRADLEY,
Governor of Kentucky.

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